REPORT

OF THE

PROCEEDINGS OF THE MIXED COMMISSION ON PRIVATE CLAIMS,

ESTABLISHED UNDER THE CONVENTION BETWEEN

GREAT BRITAIN AND THE UNITED STATES OF AMERICA,

OF THE

8TH FEBRUARY, 1853;

WITH THE

JUDGMENTS OF THE COMMISSIONERS AND UMPIRE.

COMPILED FROM THE ORIGINAL BY

EDMUND HORNBY, ESQ., BARRISTER-AT-LAW,

AND

COMMISSIONER ON THE PART OF GREAT BRITAIN.

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TABLE OF CONTENTS.

	Page
Report of Proceedings of Commission	3
Treaty between Great Britain and the United States	5
Commission of British Commissioner	11
Commission of American Commissioner	12
Declaration made by Commissioners	13
Correspondence between Commissioners relative to the Appointment of Umpire	14
Letter of Commissioners to M. Van Buren	29
Answer of M. Van Buren	31
Reply of Commissioners to M. Van Buren	32
Letter of Commissioners to Mr. Joshua Bates	34
Answer of Mr. Bates to Commissioners	35
Letter of Commissioners to the Governments of Great Britain and the United States, proposing an Extension of the Term of the Commission	36
Record of Daily Proceedings of Commissioners	39
Rules and Regulations relative to Termination of the General Business of the Commission	42
Commission of General Thomas, Agent on behalf of the United States	43
Copy of Umpire's Commission	45
Copy of Declaration made by the Umpire	47
Copy of Commission of James Hannen, Esq., Agent on behalf of Great Britain	48
Convention Extending the Term of the Commission	73
List of Claims of British Subjects upon the Government of the United States, with the Decision of the Commission in respect of each	89

27761

Page

Summary of Awards 104

List of American Citizens upon the Government of Great Britain, with the Decision of the Commission in respect of each . . 109

Reports of Decisions of the Commissioners, and Arguments of Council 121

THE "JONES"—

Seizure of—on Suspicion of being engaged in Slave Trade *id.*

Judgment of British Commissioner . . . . . *id.*

Ditto of American Commissioner 135

Ditto of Umpire 163

TEXAS BONDS—HOLFORD—

Liabitity of the Federal Government to Answer Claims on Territories previous to Annexation 164

Judgment of British Commissioner . . . . . *id.*

Ditto of American Commissioner 183

Ditto of Umpire 190

TEXAS BONDS—DAWSON—

Same point 191

How far Domicile changes, if at all, National Character . 198

Note with Reference to course pursued by American Commissioner with Reference to this Claim 206

Judgment of Umpire 207

THE "LADY SHAW STEWART"—

As to Liability of United States' Government for Damages caused by conduct of its Custom House Officers.

Judgment of British Commissioner 208

Ditto of Umpire 211

THE "BEAVER"—

Same point.

Judgment of British Commissioner 212

Ditto of Umpire 215

THE "JOHN"—

As to the Liability of Government to make Restitution in the shape of Compensation, under a Treaty, when the thing to be restored has been lost, by mere accident, without any fault on part of the Captor . . 216

Judgment of British Commissioner . . . . . *id.*

Page

THE "JOHN"—*continued.*
Ditto of American Commissioner 219
Ditto of Umpire 225

"JAMES MITCHELL"—Salvage.
Judgment of Umpire 226

THE "VOLUSIA"—Question of Jurisdiction.
Judgment of Umpire . . . . . *id.*

THE "ALBION"—
Seizure of, at a New Settlement on the Coast of America, for contravention of Custom Laws, there being no Custom House or Customs' Officers.
Judgment of American Commissioner 227
Ditto of British Commissioner 230
Ditto of Umpire 231

MESSRS. ROGERS & Co.—
As to Payment of Duty on Spirits arriving in a country in which the Customs' Laws have been changed since the departure of the goods from the country from which they were sent.
Judgment of British Commissioner 232
Ditto of Umpire 243

THE "ONLY SON"—
Illegal Demand of Duties
Judgment of Umpire 244

THE GREAT WESTERN STEAM-SHIP COMPANY
Award of Umpire 245

"TIGRIS AND SEAMEW"
Award of Umpire 247

THE "LORD NELSON"—
Whether a Government be liable in respect of an embezzlement of moneys by one of its Officers. Whether such embezzlement is a substantive ground of complaint or not, so as to bring the claim, in point of date, within the terms of the Convention
Judgment of British Commissioner 244
Ditto of Umpire 249

Page

FLORIDA BONDS—

Whether the Federal Government, by admitting Florida into the Union as a State, and thus depriving the Creditors of the Territory of the means of enforcing their Rights, has rendered itself responsible to those Creditors. It having bestowed upon the State a Constitution preventing it from raising money to pay its Debts

Judgment of British Commissioner 250

Ditto of American Commissioner 265

Ditto of Umpire 272

Extracts of Constitution of Florida 276

THE MESSRS. LAURENT— 279

Points:—That the mere residence in a foreign country in time of peace or war, does not deprive a merchant of his original citizenship, or of the right to call for the protection of the Government of his native country; although his continued residence in the country in time of war, gives the right to the enemies of that country to consider and treat him as an enemy.

That although such residence may clothe him with certain rights of citizenship and involve certain liabilities, it does not divest his original national character.

That the practice and usage of nations sanction the interference of a Government on behalf of its subjects or citizens resident abroad, as well as at home.

That Consuls and Diplomatic Agents are specially instructed to watch over and protect the subjects of the countries of their respective Governments, resident in the countries to which they may be accredited.

That such being the usage and practice of nations, the words used in this Treaty are to be interpreted in connection with, and by the aid of, such usage and practice.

Judgment of British Commissioner 280

Ditto of American Commissioner 288

Ditto of Umpire 299

FISHERY CASES—Bay of Fundy.

As to meaning of word "Bay" as used in the Treaty of 1818

Judgment of British Commissioner 302

Page

FISHERY CASES—Bay of Fundy—*continued.*
Judgment of American Commissioner 811
Ditto of Umpire—"Washington" 324
Ditto "Argus" 327

"BARON RENFREW"—
As to whether the Provisions of the United States' Customs Act of 1799 were, or were not, cumulative with reference to Smuggling
Judgment of British Commissioner 328
Ditto of Umpire 331

BRIG "ENTERPRIZE"—
As to whether the British Government was liable to make Compensation in respect of Slaves who obtained their liberty by Act and operation of English law . . . 332

Points:—1. That laws have no force in themselves beyond the territory of the country by which they are made.

2. That, while by the comity of nations, the laws of one country are, in some cases, allowed by another to have operation within its territory when it is so permitted, the foreign law has its authority in the other country from the sanction given to it there, and not from its original institution.

3. That every nation is the sole judge of the extent and the occasions on which it will permit such operation, and is not bound to give such permission when the foreign law is contrary to its interests or its moral sentiments.

4. That England does not admit within its territory the application of any foreign law establishing slavery, having abolished the status of slavery throughout her dominions.

5. That the condition of apprenticeship, as permitted to remain in the West India Islands, formed no exception to the abolition of slavery throughout the British dominions, as it was a system entirely dif-

Page

BRIG "ENTERPRIZE"—*continued.*

ferent from slavery, and would not justify sustaining any other description of slavery.

6. That the liberty of any individual in British territory could not be restrained without some law to justify such restraint, and that neither the Apprentice Law, nor any other law, could be appealed to, to justify the detention of these negroes.

7. That slavery was not a relation which the British Government, by the comity of nations, was bound to respect.

Judgment of British Commissioner 334
Ditto of American Commissioner 353
Ditto of Umpire 373

"CREOLE AND HERMOSA"—
Same points :— 376
Judgment of British Commissioner 377
Judgment of Umpire . . . . . 389 & 394

McCALMONT & Co.—
Seizure of Goods by Robbers.
Award of Umpire 396

The "LAURENCE."
Award of Umpire 397

McCALMONT—
As to right to levy Duties in a conquered country.
Judgment of British Commissioner 399
Ditto of American Commissioner 406
Ditto of Umpire 408

KERFORD AND JENKINS—
As to meaning of Special Licence to Trade with an Enemy.
Judgment of British Commissioner 410
Ditto of American Commissioner 411
Ditto of Umpire 414

THE "CONFIDENCE"—
Award of Umpire 426

Page

THE "DIRECTOR"—
Smuggling.
Award of Umpire 427

McLEOD—
As to right of a Government to prosecute an individual, the subject of a foreign State, for an act, criminal in itself, but authorized, or ratified, by the protecting State.
Judgment of British Commissioner 428
Ditto of American Commissioner 443
Ditto of Umpire 455

MESSRS. UHDE & Co.—
Domicile—
(Same Points as in Laurent's Case. Page 279.)
Argument of Dr. Phillimore 456
Ditto of General Thomas 458
Judgment of British Commissioner 463
Ditto of American Commissioner 471
Ditto of Umpire 474

"PALLAS"—
Award of Umpire 478

THE "PRINCE OF WALES." H B Co
Judgment of British Commissioner. 479
Order of Commissioners as to Rate of Exchange 481
Recapitulation of Awards to British Claimants 482
Recapitulation of Awards to the United States' Claimants . . 483
Expenses of Commission 484
Notes thereon . . . . . *id.*
Certificate of Correctness by Secretary of Commission . . . 485

ERRATA.

In page 164, *for* "Florida," *read* "Texas."
191, *id.*
207, *id.*

NOTE.—IN consequence of several inaccuracies and omissions in the Journal of the Proceedings of the Commissioners, kept by the Secretary, I have been obliged to correct the same from my own Minutes.

In this respect, therefore, the Copy, presented to Her Majesty's Government, differs from that forwarded under the care of Mr. Upham, junior, to the Government of The United States.

EDMUND HORNBY,
British Commissioner

February 8, 1855.

REPORT OF THE PROCEEDINGS AND AWARDS OF THE COMMISSIONERS AND UMPIRE UNDER THE CONVENTION OF FEBRUARY 8, 1853, FOR THE ADJUSTMENT OF CLAIMS OF SUBJECTS OF GREAT BRITAIN AGAINST THE UNITED STATES, AND OF CITIZENS OF THE UNITED STATES AGAINST THE BRITISH GOVERNMENT.

THE undersigned Commissioners, herewith, respectfully report to their respective Governments their Proceedings and Awards, under the Convention of February 8, 1853, for the Adjustment of Claims of citizens of the United States and subjects of Great Britain against either Government.

The cases submitted for the consideration of the Commissioners have greatly exceeded the number originally anticipated. This has arisen from the fact that the Agents of the Governments have deemed it their duty to submit all claims coming within the period prescribed by the Convention, which had been presented to either Government for its interposition with the other.

Many of these cases might never have been made a matter of consideration, had they not been thus brought forward.

The mere statement of some of them would justify their

rejection, but in most instances they have required very considerable investigation.

The duties of the Commissioners have thus been greatly increased beyond what was originally contemplated. Many of the cases also had formed the subject of long and serious discussions between the two Governments. In the adjustment of these claims the Commissioners have naturally felt the responsibility cast upon them, and have, therefore, devoted no inconsiderable amount of time and labour to their settlement, and they have found it difficult to conclude the business of the Commission within the time to which it had been extended.

They have, however, passed upon all the cases before them, and beg to report their action and that of the Umpire thereon, as the best result they have been able to attain in discharging the important duties intrusted to them.

The papers herewith presented consist of the Journal of Proceedings of the Commissioners and Umpire; the List of Claims of the citizens or subjects of either country against the other, with the Awards and Opinions thereon, together with the Correspondence relative to the appointment of an Umpire, and other matters pertaining to the Commission.

All which is respectfully submitted.

EDMUND HORNBY,
British Commissioner.

N. G. UPHAM,
United States Commissioner.

Office of Commission,
January 15, 1855.

CONVENTION

FOR THE

SETTLEMENT OF OUTSTANDING CLAIMS BY A MIXED COMMISSION.

WHEREAS claims have, at various times since the signature of the Treaty of Peace and Friendship between Great Britain and The United States of America, concluded at Ghent on the twenty-fourth of December, one thousand eight hundred and fourteen, been made upon the Government of Her Britannic Majesty, on the part of corporations, companies, and private individuals, citizens of The United States, and upon the Government of The United States on the part of corporations, companies, and private individuals, subjects of Her Britannic Majesty: And whereas some of such claims are still pending, and remain unsettled, Her Majesty, the Queen of the United Kingdom of Great Britain and Ireland, and the President of the United States of America, being of opinion that a speedy and equitable settlement of all such claims will contribute much to the maintenance of the friendly feelings which subsist between the two countries, have resolved to make arrangements for that purpose by means of a Convention, and have named as their Plenipotentiaries to confer and agree thereupon; that is to say:

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, the Right Honourable John Russell

(commonly called Lord John Russell) a Member of Her Britannic Majesty's Most Honourable Privy Council, a Member of Parliament, and Her Britannic Majesty's Principal Secretary of State for Foreign Affairs;

And the President of the United States of America, Joseph Reed Ingersoll, Envoy Extraordinary and Minister Plenipotentiary of The United States to Her Britannic Majesty;

Who, after having communicated to each other their respective full powers, found in good and due form, have agreed as follows:

Article I.

The High Contracting parties agree that all claims on the part of corporations, companies, or private individuals, subjects of Her Britannic Majesty, upon the Government of The United States, and all claims on the part of corporations, companies, or private individuals, citizens of the United States, upon the Government of Her Britannic Majesty, which may have been presented to either Government, for its interposition with the other since the signature of the Treaty of Peace and Friendship, concluded between Great Britain and the United States of America, at Ghent, on the twenty-fourth day of December, one thousand eight hundred and fourteen, and which yet remain unsettled, as well as any other such claims which may be presented within the time specified in Article III hereinafter, shall be referred to two Commissioners, to be appointed in the following manner; that is to say: One Commissioner shall be named by Her Britannic Majesty, and one by the President of The United States. In case of the death, absence, or incapacity, of either Commissioner, or in the event of either Commissioner omitting, or ceasing, to act as such, Her Britannic Majesty, or the President of The United States respectively, shall forthwith name another person to act as Commissioner in the place or stead of the Commissioner originally named.

The Commissioners so named shall meet at London at

the earliest convenient period after they shall have been respectively named, and shall, before proceeding to any business, make and subscribe a solemn Declaration that they will impartially and carefully examine and decide, to the best of their judgment, and according to justice and equity, without fear, favour, or affection to their own country, upon all such claims as shall be laid before them on the part of the Governments of Her Britannic Majesty and of The United States respectively; and such Declaration shall be entered on the record of their proceedings.

The Commissioners shall then, and before proceeding to any other business, name some third person to act as an arbitrator or umpire in any case or cases on which they may themselves differ in opinion. If they should not be able to agree upon the name of such third person, they shall each name a person; and in each and every case in which the Commissioners may differ in opinion as to the decision which they ought to give, it shall be determined by lot which of the two persons so named shall be the arbitrator or umpire in that particular case. The person or persons so to be chosen to be arbitrator or umpire shall, before proceeding to act as such in any case, make and subscribe a solemn declaration, in a form similar to that which shall already have been made and subscribed by the Commissioners, which shall be entered on the record of their proceedings. In the event of the death, absence, or incapacity of such person or persons, or of his or their omitting or declining, or ceasing to act as such arbitrator or umpire, another and different person shall be named as aforesaid, to act as such arbitrator or umpire in the place and stead of the person so originally named as aforesaid, and shall make and subscribe such declaration as aforesaid.

Article II.

The Commissioners shall then forthwith conjointly proceed to the investigation of the claims which shall be presented to their notice. They shall investigate and decide upon such claims in such order, and in such manner, as they

may conjointly think proper, but upon such evidence or information only as shall be furnished by or on behalf of their respective Governments. They shall be bound to receive and peruse all written documents or statements which may be presented to them by or on behalf of their respective Governments in support of or in answer to any claim, and to hear, if required, one person on each side on behalf of each Government, as counsel or agent for such Government, on each and every separate claim. Should they fail to agree in opinion upon any individual claim, they shall call to their assistance the arbitrator or umpire, whom they may have agreed to name, or who may be determined by lot, as the case may be; and such arbitrator or umpire, after having examined the evidence adduced for and against the claim, and after having heard, if required, one person on each side as aforesaid, and consulted with the Commissioners, shall decide thereupon finally, and without appeal. The decision of the Commissioners, and of the arbitrator or umpire, shall be given upon each claim in writing, and shall be signed by them respectively. It shall be competent for each Government to name one person to attend the Commissioners as agent on its behalf, to present and support claims on its behalf, and to answer claims made upon it, and to represent it generally in all matters connected with the investigation and decision thereof.

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, and the President of the United States of America, hereby solemnly and sincerely engage to consider the decision of the Commissioners conjointly, or of the arbitrator or umpire, as the case may be, as absolutely final and conclusive upon each claim decided upon by them or him respectively, and to give full effect to such decisions without any objection, evasion, or delay whatsoever.

It is agreed that no claim arising out of any transaction of a date prior to the 24th of December, 1814, shall be admissible under this convention.

Article III.

Every claim shall be presented to the Commissioners within six months from the day of their first meeting, unless

in any case where reasons for delay shall be established to the satisfaction of the Commissioners, or of the arbitrator or umpire, in the event of the Commissioners differing in opinion thereupon; and then, and in any such case, the period for presenting the claim may be extended to any time not exceeding three months longer.

The Commissioners shall be bound to examine and decide upon every claim within one year from the day of their first meeting. It shall be competent for the Commissioners conjointly, or for the arbitrator or umpire if they differ, to decide in each case whether any claim has or has not been duly made, preferred, or laid before them, either wholly or to any and what extent, according to the true intent and meaning of this Convention.

Article IV.

All sums of money which may be awarded by the Commissioners, or by the arbitrator or umpire, on account of any claim, shall be paid by the one Government to the other, as the case may be, within twelve months after the date of the decision, without interest, and without any deduction save as specified in Article VI hereinafter.

Article V.

The High Contracting Parties engage to consider the result of the proceedings of this Commission as a full, perfect, and final settlement of every claim upon either Government, arising out of any transaction of a date prior to the exchange of the ratifications of the present Convention; and further engage that every such claim, whether or not the same, may have been presented to the notice of, made, preferred, or laid before the said Commission, shall, from and after the conclusion of the proceedings of the said Commission, be considered and treated as finally settled, barred, and thenceforth inadmissible.

Article VI.

The Commissioners and the arbitrator or umpire shall keep an accurate record and correct minutes or notes of all

their proceedings, with the dates thereof, and shall appoint and employ a clerk or other persons to assist them in the transaction of the business which may come before them.

Each Government shall pay to its Commissioner an amount of salary not exceeding three thousand dollars, or six hundred and twenty pounds sterling a year, which amount shall be the same for both Governments.

The amount of salary to be paid to the arbitrator or arbitrators, as the case may be, shall be determined by mutual consent at the close of the Commission.

The salary of the clerk shall not exceed the sum of fifteen hundred dollars, or three hundred and ten pounds sterling a year.

The whole expenses of the Commission, including contingent expenses, shall be defrayed by a rateable deduction on the amount of the sums awarded by the Commission; provided always, that such deduction shall not exceed the rate of five per cent on the sums so awarded.

The deficiency, if any, shall be defrayed in moieties by the two Governments.

Article VII.

The present Convention shall be ratified by Her Britannic Majesty, and by the President of the United States by and with the advice and consent of the Senate thereof, and the ratifications shall be exchanged at London as soon as may be within twelve months from the date hereof.

In witness whereof the respective plenipotentiaries have signed the same, and have affixed thereto the Seals of their Arms.

Done at London the eighth day of February in the year of our Lord, one thousand eight hundred and fifty-three.

(L. S.) J. RUSSELL.
(L. S.) J. R. INGERSOLL.

Ratifications of the said Convention were exchanged at London on the 26th of July, 1853.

In accordance with the terms of this Treaty, Her Britannic Majesty appointed Edmund Hornby, Esq., Commissioner on the part of the United Kingdom of Great Britain and Ireland; and the President of the United States of America appointed the Honourable Nathaniel G. Upham, Commissioner on the part of the United States, to meet and carry into effect the provisions of the above-named Convention; and the said Commissioners met on this the fifteenth day of September, one thousand eight hundred and fifty-three, at their office in London, and interchanged their respective Commissions, which are as follows:—

COMMISSION OF HER BRITANNIC MAJESTY'S COMMISSIONER.

Victoria R.

VICTORIA by the Grace of God, Queen of the United Kingdom of Great Britain and Ireland, Defender of the Faith, &c., &c., to all and singular to whom these presents shall come, greeting:

Whereas a Convention was concluded and signed at London, on the eighth day of February, one thousand eight hundred and fifty-three, between us and our good friends the United States of America, for the settlement of outstanding claims of the one Contracting Party upon the other, by means of a mixed commission.

Now know ye, that We, reposing especial trust and confidence in the approved learning, wisdom, and fidelity of our trusty and well beloved Edmund Hornby, Esquire, have named, made, constituted, and appointed, and do by these presents name, make, constitute, and appoint him our Commissioner under, and pursuant to, the said Convention, to meet the Commissioner appointed, or to be appointed, on the part of our good friends, the United States of America; and, in conjunction with him, to investigate and decide upon all such claims as shall be presented to the notice of the Commissioners according to the true intent and meaning of the Convention above mentioned.

In witness whereof we have signed these presents with our royal hand.

Given at our Court at Osborne House, the twenty-sixth day of August, in the year of our Lord one thousand eight hundred and fifty-three, and in the seventeenth year of our reign.

By Her Majesty's command.

CLARENDON.

COMMISSION OF THE AMERICAN COMMISSIONER.

FRANKLIN PIERCE, President of the United States of America, to all who shall see these presents, greeting:

KNOW ye, that, reposing special trust and confidence in the integrity and abilities of Nathaniel G. Upham, of New Hampshire,

I have nominated, and by and with the advice and consent of the Senate, do appoint him Commissioner of the United States, under the Convention with Her Britannic Majesty on the subject of Claims, and do authorize and empower him to execute and fulfil the duties of that office according to law; and to have and to hold the said office, with all the powers, privileges, and emoluments thereunto of right appertaining unto him, the said Nathaniel G. Upham.

In testimony whereof I have caused these letters to be made patent, and the seal of the United States to be hereunto affixed.

Given under my hand, at the City of Washington, the twenty-third day of March, in the year of our Lord one thousand eight hundred and fifty-three, and of the Independence of the United States the seventy-seventh.

By the President,

(Signed) FRANKLIN PIERCE.

(Signed) W. L. MARCY,
Secretary of State.

THE COMMISSIONERS MADE AND SUBSCRIBED THE FOLLOWING SOLEMN DECLARATION.

Declaration.

We, the undersigned Commissioners, appointed in pursuance of a Convention for the Adjustment of certain Claims of British Subjects on the Government of the United States, and of Citizens of the United States on the British Government, concluded at London the eighth day of February, one thousand eight hundred and fifty-three, do severally and solemnly declare, that we will impartially and carefully examine and decide, to the best of our judgment, and according to justice and equity, without fear, favour, or affection to our own countries, upon all such claims as shall be laid before us on the part of the Governments of Her Britannic Majesty and of the United States respectively.

In witness whereof we have, this fifteenth day of September, one thousand eight hundred and fifty-three, made and subscribed this our solemn Declaration.

EDMUND HORNBY,
Commissioner on the part of Her Majesty.

NATHANIEL G. UPHAM,
Commissioner on the part of the United States.

CORRESPONDENCE

RELATIVE TO THE

APPOINTMENT OF UMPIRE.

No. 1.

The Honourable N. G. Upham, United States Commissioner, to Mr. Edmund Hornby, British Commissioner.

SIR, *London, September 22*, 1853.

BY the terms of the Treaty for the adjustment of claims entered into between the United States and Great Britain, it is provided that the Commissioners appointed by the respective Governments, shall, before proceeding to any other business, name some third person to act as arbitrator or umpire in any case or cases in which they may themselves differ in opinion, and that if the Commissioners should not be able to agree on some person, they should each name a person as umpire, and that the umpire, who should act, in case of any difference of opinion, should be designated by lot.

The Commissioners, therefore, have not only the duty devolved upon them, by the terms of the Convention, of a "speedy and impartial" settlement, according "to justice and equity," of subsisting claims of citizens of either country on the Government of the other; but also of constituting, in conformity to the same principles of justice and equity, the Tribunal which is to be the ultimate arbiter in the decision of these claims. A proper discharge of this duty is of vital consequence to the success of the Convention.

A disagreement as to the person who shall be selected as umpire, and the necessity of resorting to the contingency of lot, to constitute one in any given case must detract greatly from the moral effect of any decisions made by the Commission.

If the Commissioners disagree as to men from just cause, a subsequent selection by either party of those men by lot, necessarily constitutes an unequal and unjust tribunal between the parties, and the remaining forms of a trial might as well be dispensed with.

If they disagree from any cause, the tribunal is necessarily constituted of men unsatisfactory to the Commissioners, and an adverse decision, whether right or wrong, would naturally carry the impression to claimants that their cause was lost, not from want of its justice, but for want of a fair constituted tribunal.

Under these circumstances it is highly important that the Commissioners should agree, and to effect this, should adopt such principles of selection in coming to a decision, as will be most likely to ensure the appointment of an umpire, impartially situated between the Governments and the claimants, not merely nominally, but actually so.

The action of the Commissioners on this point is not only important as regards the issue of this Convention; but its successful organization may go far to establish the practice of mutual arbitration between our own Governments in future, and between other Governments in similar claims.

Such claims must necessarily arise from time to time under the extended commercial relations of the two countries, and the same difficulties of adjustment of them that have heretofore existed, will doubtless continue.

The delays incident to official intercourse between Governments, the frequent changes in Administrative Officers, the difficulty in procuring appropriations through the respective Legislative branches of either Government, for the payment of claims if allowed, the fact that the allowance of such claims for the most part is the impeachment of the just and proper conduct of some official of either Government, or perhaps of the executive officers themselves, and

the fact that the discussion and allowance of claims are sometimes embarrassed by partizan conflict and feelings, are circumstances common to both Governments, which tend greatly to dishearten claimants, excite national animosities, and render it desirable that an equal and impartial Tribunal, independent of any such difficulties should be constituted, whose sole duty should be, in a judicial capacity, to adjust such claims.

Our great aim, then, is to constitute a Tribunal, mutually appointed, standing in a just and equal position between the Government and the claimants, to adjust these matters; and a failure to do this, is substantially a failure of the great objects of the Convention, while it necessarily impairs the hope of all similar attempts at adjustment. For these reasons, I have desired to exert every possible effort for agreement between us, and purpose to repeat the considerations urged by me at various Conferences, that they may be addressed more fully to your attention, and that a more permanent record of our views and efforts on this subject may be preserved.

There are various circumstances that limit the range of selection of an umpire, that have already been adverted to, and in which you, for the most part, concurred.

1st. It is essential that any umpire appointed should be favourably known in America, and have an established reputation there for integrity and impartiality.

2nd. It is essential that whoever is selected should be immediately accessible, as the Commission must terminate within a year, and the umpire may not be called upon till near the close of it, as all claims are not necessarily to be filed until the expiration of nine months from the opening of the Commission.

3rd. From the great difficulty and delay in translating intelligently, and satisfactorily, the evidence and arguments in the several cases, as well as the very limited period of the Commission, it is essential that the umpire be intimately acquainted with the English language, and able to write and speak it with perfect ease.

4th. The very limited compensation allowed the umpire,

and the deferred terms of payment render it hardly possible for us to obtain the attendance and services of any one as umpire from the continent.

5th. From the several circumstances combined, it becomes almost essential that whoever is selected should have a residence in London.

This being the case, it is necessary to direct our attention to those persons at London, or in the vicinity, who are so impartially situated between the two countries that they may properly be designated as umpire. It may be taken for granted that Americans or Englishmen who have not had a common residence and personal reputation in both countries do not hold this position. If, however, individuals of either nation can be found, equally well known by a long residence in both countries, and with well established and unimpeached character for integrity and uprightness in each, they would seem to have all the requisites for such an appointment. Of this class of individuals, I have already named George Peabody, Esq., who has resided in London for nearly twenty years past, whose partner is an Englishman, whose business, location, and interests are all here, and who is equally well known in Europe and America.

I cannot learn, from any inquiries you have been able to make, that any doubts exist as to his impartiality and uniform uprightness and integrity. No English claimants, I believe, from their knowledge of the man, would hesitate to trust the decision of their claims to him, and I cannot believe any just doubt on this point can exist on the part of the English Government.

A suggestion has been made against him as an American; but I think that objection is fully equalized by his long residence, permanently established business location, and personal associations in London. It has been further suggested that it might be unsafe to trust the decision of claims, in which either Government is interested, to a Merchant. Mr. Peabody has been entirely out of business for years as a merchant, and his occupation is now rather that of a banker; but however this may be, it seems to me the mere fact of a

man's position as a merchant does not cause such bias on his judgment as to disqualify him from acting in the capacity of umpire. Such an exception would not be regarded for a moment as sound, when taken as to the constitution of a Court of Justice, or the impanelment of Jurors.

The other Commissioners are selected solely by the Governments, and this circumstance may subject them to jealousies on the part of claimants; and, while such is the case, it seems to me the rejection of an individual, solely because he is a merchant, manifests, under the circumstances, greater distrust than is necessary for the protection of the interests of the Governments.

A suggestion has been made that some foreigner, neither English nor American, should be appointed. The objections to such a selection are, that there are few foreigners here who are known in America, except persons among the Representatives of other nations at this Court, or persons who, on the continent, may have come in collision with their own Governments.

There might be objections to the selection of individuals from the latter class of persons, as having prejudices against existing forms of Government in Europe, or the mode of their exercise, while there are manifestly objections to the Representatives of foreign nations here, for the reason that similar claims may exist between our own Government and theirs, or the British Government and theirs; also from the personal official position of such Representatives at this Court, and the present intimate relations and connections between Great Britain and these nations on the continent rendering their views, feelings, and interests nearly identical.

Under the exceeding difficulties, therefore, of making a mutual selection of umpire, and the still greater difficulty of having separate umpires, to be designated in given cases by lot, I think we ought not to hesitate in naming some person from the class represented by Mr. Peabody, as standing most nearly in the position of impartiality, that would meet the approval of just men in both countries.

I would here again remind you, that by the provision of

the Convention, requiring the Commissioners to hold their sessions in London, important advantages are secured in favour of the British Government and claimants over those of The United States, by means of far greater facilities and readiness in communication existing between their public offices and the Commissioners. These inequalities are beyond our control, and are only adverted to as a reason why we should not desire farther to increase them, in the organization of the Commissioners, unless imperative necessity requires it.

I trust a full and candid consideration of the various views I have presented will induce you to concur in opinion with me as to the direction in which we should look for the choice of an umpire.

If we can harmonize to the extent, I should have but little doubt we might readily arrive at a conclusion that would satisfy all parties, and would conduce to the best interests of both Governments. I shall be happy to receive a reply from you at your earliest convenience.

With the highest respect, &c.

(Signed) **N. G. UPHAM.**

No. 2.

Mr. Hornby to Mr. Upham.

SIR, *London, September 27*, 1853.

I BEG to acknowledge the receipt of your letter of the 22nd instant, in which, after expressing your opinion of the importance attaching to the selection of an umpire whose position and character would secure respect for, and cheerful acquiescence in, his decisions, and your disinclination to resort to the alternative pointed out in the Convention under which the Commission is constituted, in the event of our not being able to agree upon the same individual, you trust that I shall be induced, by the reasons you offer me, to concur in opinion with yourself as to the direction in which to look for such an umpire as we jointly desire to find.

In your letter you also recapitulate the arguments urged by yourself in the several conversations which we have held upon this subject, and in the force of these arguments, so far as they have reference to the qualifications which an umpire should possess, I have never hesitated to express my concurrence. But I submit to your consideration whether the conclusions drawn from these arguments are fairly deduced, when you tell me that we ought not to hesitate in naming some person, from the class represented by Mr. Peabody, or, in other words, and in default of your suggesting any other person, Mr. Peabody himself.

For the reasons I have assigned in conversation with you, I concur in thinking that "any umpire appointed should be favourably known in America, and have an established reputation there for impartiality and integrity" as well as here; and I also consider it desirable that he should be easily accessible and possess an intimate acquaintance with the English language. With respect, however, to your allusion to the limited compensation to be allowed for the umpire, and which you urge as an argument against appointing any individual who may not be in England, I would observe, that by the Convention the compensation is not fixed, the matter being left open to be determined by mutual consent at the close of the Commission; and the higher we look in the social scale the more probable does it become that pecuniary compensation will be a secondary consideration. But although I agree with you upon the desirableness of the umpire being in London and thoroughly acquainted with the English language, yet these points are very secondary, in my opinion, to the all important one of the umpire's possessing the qualification of being entirely free from bias either by reason of nationality, connection, or of any possibility of interest in the matters or questions to be determined.

Feeling, therefore, as strongly as you can do upon this subject, and echoing every argument which you have made use of to demonstrate the expediency of our agreeing upon one and the same individual to fill the office of umpire, as

much for the purpose of securing public approval for the organization of similar tribunals under like circumstances in the future, as for investing the decisions of the Commissioners in the present with a certain moral effect, I have endeavoured, in presenting for your consideration and approbation the names of several gentlemen, to select such only as possessed all the qualifications we both feel to be desirable; and who, from the independence of their station in society, their high character, varied acquirements and world-wide reputation, would be approved of by our respective Governments, and have the entire confidence of the several claimants. Permit me to recall their names to your recollection: Count Strzelecki, M. Van de Weyer, the Chevalier Bunsen, the Duke de Broglie, the Duke de Nemours, Prince Joinville, M. Guizot, and M. Lamartine. Even now I am loth to think that the objection, which you imply would be felt by your countrymen to the appointment of an European not an Englishman, is one which can, or ought to be, brought against those individuals whose names I have already brought under your notice. I cannot conceive that they are not "quite as well known across the Atlantic as here." None of them "have come into collision with their own Governments" that I am aware of, or have conceived prejudices "against existing forms of Governments in Europe, or the mode of their exercise."

The circumstance, also, of Mr. Van de Weyer and the Chevalier Bunsen being the Representatives of foreign nations at this Court, ought not, I submit, to be weighed in the scale, when their literary and social reputation entitles them to take rank amongst that class of citizens of the world in whom every nation takes a pride, whose fame is the common property of all, and whose feelings, sympathies, and interests may be fairly considered as not confined to one place or people, but equally and indifferently spread over the whole world.

Nor, permit me to state, do the exceptions which you have taken on the score of the possibility "that similar claims may exist between the United States' Government, or the British Government, and the Government of the party

who may be selected, or his official position at this Court," appear to me to be well founded. It is not, I venture to suggest, to be presumed that the mere fact of an official position here, or the possibility of there being outstanding claims between these countries and the Governments of Great Britain and the United States, would influence, for a moment, the judgment of men of such standing and repute as either M. Van de Weyer or the Chevalier Bunsen; and I think you will admit, that such men as the French Princes, the Duke de Broglie, MM. Strzelecki, Guizot, and Lamartine, can have no bias upon matters of such little political moment as the claims in question.

In objecting to Mr. Peabody, as an individual not possessing the desirable qualifications which we both think are essential in an umpire, I do not mean, for a moment, to cast the slightest shadow on the reputation of that gentleman, either as a citizen of The United States, or as an American merchant residing here. He has honourably earned a high character for integrity and uprightness, and reflects credit on the country of his birth; but he is essentially an American, standing at the head of the American commercial firms in this country, and looked upon here as, *par excellence*, the representative of the Amerian commercial community in this country. To take him, therefore, from his proper sphere, and to erect him into an impartial arbitrator between the Government of this country and the very class of whom, as I have stated, he is considered the fitting and honourable head, would be to place him in an invidious position—to throw a suspicion over the proceedings of the Commission, and to generate a feeling (likely enough to arise in the mind of a disappointed claimant, and by him to be communicated to a public almost equally disposed to sympathize with wrongs, real as well as imaginary), however unfounded such a feeling might be, that impartiality was not sufficiently secured in an organization in which the ultimate appeal was left to an individual connected by birth—possessing all the natural sympathy which most men bear to the institutions and society of their fatherland—owing allegiance to, and being

long engaged in extensive commercial transactions with the country of one of the two sets of claimants.

Having myself a strong feeling of doubt, whether, in any case, our choice should fall upon a British subject, an American citizen, or upon any person engaged in commercial pursuits, I abstain from officially referring to individuals, natives of this country. At your request, however, and as an earnest of my sincere desire to agree with you in appointing one individual, instead of "resorting to the contingency of lot to constitute one" I furnished you with a list of the names of such gentlemen — Englishmen, whose character, reputation, independent station, and social position place them above all suspicion. I again refer you to it for your consideration. Amongst these names you will see those of Lords Brougham, Truro, and St. Leonards, Ex-Lord Chancellors of Great Britain; Mr. Justice Patteson, Ex-Judge of the Queen's Bench; Thomas Babington Macaulay, George Grote, and Mr. Thomas Baring, names which I will venture to say are sufficient guarantees for the justice and impartiality of any judgment they may be called upon to give. At the same time I beg you to believe that my opinion remains unaltered, and that it is amongst foreigners, entirely indifferent to both countries as regards birth and connections, but equally acceptable to each on the ground of friendly relations, that we ought to look for the individual who is to decide upon all questions upon which we may not (as I trust will seldom, if ever, be the case) be able to agree.

It will be with great regret, should the necessity arise (a necessity which I feel must, if possible, be avoided) for our having to proceed to the nomination of two umpires, to be appointed in each case by lot, I trust we shall still find some person in whose judgment and impartiality we shall have full confidence, and whose social position and high reputation will justify us in nominating him to the responsible and honourable office in question between us.

No endeavour, I can assure you, shall be wanting on my part; and feeling that you desire to carry out the object of

the Convention in its integrity in the same spirit, I hope I may still calculate upon your cordial co-operation.

I am, &c.

(Signed) EDMUND HORNBY.

No. 3.

Mr. Upham to Mr. Hornby.

SIR, *London, October* 3, 1853.

YOUR line of the 27th ult. was duly received, and has been considered with much attention.

I am very happy to learn that you fully concur with me in the desirableness of our agreeing upon an umpire, and in the various considerations urged by me to show its importance; also, that you agree as to the requisites regarded by me as essential in an umpire, and in the circumstances named as restricting and limiting the range of our choice, with the exception that you do not consider a selection as necessarily limited to the class of persons represented by Mr. Peabody, but believe some one may be more properly appointed who is not a citizen of either country, it being conceded by you that "any umpire" thus selected should be favourably known in America, and have an established reputation *there* for impartiality and integrity as well as *here*.

You will observe, from the points taken by me in my line, it does not follow that the selection must necessarily be made from the class I named, to the exclusion of foreigners to either Government; but that the difficulty of selecting persons from foreigners having the qualifications agreed to be necessary, were such as to render it quite hopeless to direct our attention in that quarter; and that, for these reasons, I expressed the belief we should look, in the selection of an umpire, to the class represented by Mr. Peabody, as the one in which "we might most readily arrive at a conclusion that would satisfy all parties, and would conduce to the best interests of both Governments."

After a reconsideration of the various reasons assigned by

you for the selection of a foreigner, and of the highly respectable names you have presented, the difficulties arising from such a selection are still deeply impressed upon my mind. Some of the individuals named in that class by you, though, doubtless, highly honourable men, and having an unexceptionable character "for impartiality and integrity" among their acquaintance, have no public reputation in America. Others have had claims to notice mainly from hereditary position, or past temporary connection with European changes in Government, or as Ministers of such Governments, rather than from such personal qualities of character as should commend them to this position.

To these names you have added those of individuals holding the highly honourable position of representatives of other Governments at the Court of Great Britain. I am fully sensible of the eminent ability, extensive acquirements, and personal worth of the present Representatives of other Governments here; but the fact that The United States has claims similar to those pending with this country, which have been matters of discussion with most of those Governments, and possibly of prejudged opinion on the part of these Represensentatives themselves, together with considerations arising from their intimate personal and official relations here in matters, to them, of vastly paramount importance, might be likely to create, in the minds of claimants, the impression that the tribunal was not as equally and impartially constituted, in reference to them, by such a selection, as a regard for justice required and they might with propriety demand.

For these reasons, all of them of a public character, I have been unable to concur in the appointment of individuals from the class of persons suggested by you at my request, and "as an earnest of your desire," as you say, "to agree on some individual as umpire, rather than of resorting to the contingency of lot to constitute one," you have named various Englishmen, "whose character, reputation, and social position place them," as you remark, "above all suspicion." I fully agree with you in the high character of these

individuals, and were the hearing in my own country, should hardly object to some of the persons named.

Our claimants, however, come a long distance to present their claim here; and, in addition to this circumstance, might think it hardly equal that the tribunal should be constituted in such manner. Would it not, under the circumstances, be more equal that the selection of umpire should be from our country? I might name a gentleman, now on the continent, who is shortly to return here, who would compare favourably with any one you have mentioned, whose fame is achieved, who has no personal ambition to gratify, except, perhaps, that of establishing a reputation for justice in both hemispheres. I allude to Martin Van Buren, late President of the United States. Among this class of persons, who have, in addition, not only an American but an English reputation, gained here by long residence, I might name also Richard Rush and Washinton Irving.

After the repeated conferences we have had, and the full consideration I have given the matter, my impression is fixed that, having a due regard to impartiality, we must select some individual of known personal international reputation, gained by actual substantial residence in both countries, and uniting, with the requisites, the proper personal attainments for the position, or we must disagree in the choice of umpire.

I have delayed an answer to your line, hoping to have had a reply to some inquiries that might have enabled me to add further names than I now can give; I would, however, suggest, for your consideration, in addition to those already mentioned, Russell Surgis, of London, an individual of established reputation here, possessing, in the fullest degree, all the necessary characteristics for such an appointment; and Thomas Aspinwell, our late Consul at London, who has been twenty-eight years a resident here, and whose high attainments as a literary man, eminently just and impartial mind and noble traits of character, place him above suspicion and doubt among all who know him in either country.

Hoping by these suggestions we may be enabled to come

to some mutual agreement, which is so highly to be desired.

I am, &c.
(Signed) N. G. UPHAM.

NOTE.—In presenting this line, notice was given by Mr. Upham, American Commissioner, that he should propose Joshua Bates, Esq., of London, as umpire, should it become necessary.

No. 4.

Mr. Hornby to Mr. Upham.

SIR, *London, October* 11, 1853.

I BEG to acknowledge the receipt of your letter of the 3rd instant, in which you state your objections to the several gentlemen whose names I had the honour to suggest to you in my last communication, and in which also you do me the favour to present to my notice the names of five other gentlemen, all Americans. You likewise allude to the national feeling which might possibly arise in America regarding the fairness of decisions made in this country, and at a distance from the residence of American claimants, and you urge this circumstance as a reason for my acquiescence in the choice of an umpire, who should be an American by birth.

Whilst, however, I am willing to admit the force of some of these observations, and am sincerely anxious to do anything which, in a spirit of fairness and justice, I can do, to place the two classes of claimants upon a feeling of equality, so that it shall be unreasonable in either to question the impartiality of those appointed to adjudicate on the several claims. I cannot admit as founded in reason, or justified by experience, the implication, either that England exercises so vast an influence on the rest of Europe as to render her capable, if even she were so inclined, of prejudicing the interests of the people of any other country in such questions

as those involved in the claims about to be submitted to our decision; or that, in so far as the illustrious individuals I have ventured to name are concerned, *that* influence could, or would, in any instance warp their judgments, or give to their minds an undue and improper bias. I am unwilling, also, to believe that any consideration, either public or private, could induce men of such high standing and universal fame to depart one hair's breadth from that clear and straightforward course of conduct which it is essential an umpire should pursue.

It was this conviction which led me to submit their names to you, and it is an undoubted confidence in the integrity of the great men of your country that induces me to acquiesce in the nomination of Mr. Martin Van Buren; and I do so the more readily, because I cannot but conceive that the man whom the citizens of so great a country as The United States should have deemed worthy to fill the post of chief magistrate and ruler, must likewise be worthy of the confidence of a nation whose laws, sympathies, and feelings, are so nearly identical with their own.

Mr. Martin Van Buren's career and character is also so well known and esteemed in England, and his reputation as a statesman, a lawyer, and a gentleman, is so firmly established here, that I do not hesitate to waive, in his favour, the more important of the objections, which I felt myself justified in making to the appointment of an American to the office of umpire under the Convention constituting the Commission; and in so far as he is concerned, I am willing to give up my own opinion on the expediency of choosing that officer from a class entirely indifferent by reason of nationality to the claimants of either country.

In thus acquiescing in the nomination of one of the gentlemen proposed by you, a countryman of your own, and also of one section of the claimants, I am actuated alone by the consideration of his high personal qualifications, my full reliance on your good faith, and my own desire to avoid the alternative provided by the Convention in case of a disagreement between us on this important particular. To these

considerations I look for my justification with my countrymen, feeling assured that, in having acted on my own judgment for the best, I am endeavouring, so far as it is in my power, to serve, indifferently, the real interests of both sets of claimants.

I am, &c.

(Signed) EDMUND HORNBY.

No. 5.

Mr. Hornby and Mr. Upham to Mr. Martin Van Buren.

SIR, *London, October* 13, 1853.

INCLOSED you will find a copy of the Convention for the adjustment of certain claims between Great Britain and The United States.

The Undersigned have been appointed Commissioners on the part of the two Governments to carry the provisions of the Convention into effect, and the first meeting was holden by them on the fifteenth of September ultimo. Since that time they have been occupied in various conferences in reference to the appointment of an umpire, required to be made by the terms of the Convention, to act in case of any disagreement between the Commissioners. In endeavouring, however, to fix upon an individual, who should unite in himself the requisites of high character, exalted position, and strict impartiality, they have experienced the greatest difficulty; nevertheless, they are happy to say that they have been able to unite cordially in agreeing upon yourself, and believe your appointment will be highly acceptable to their respective people and Governments.

The object of this letter is to apprise you of this selection, and to express the hope of the Undersigned that your acceptance of the post may be consistent with your engagements.

You will perceive that an umpire will be called upon to act only in cases of disagreement between the Commissioners, which, it is to be hoped, may not arise, but which, at the same time, is not wholly unlikely to be the case.

By the provisions of the Convention, it is possible that claims may not be presented until within three months of the period limited for its termination, after which time hearing may be had before the Commissioners, and in case of disagreement as to such claims, they could not be submitted to the umpire until near the close of the Commission. It will be desirable, therefore, for the umpire to be in a situation to act as such, should he be called upon, until the termination of the Commission, which will be on the fifteenth of September next. It is desirable also, in case the Commissioners should disagree upon any claim which might be early presented to them, that the umpire should be able to attend their hearing in London, if requisite, as promptly as may be desired by the parties, although an adjournment might in some cases be arranged; or the umpire may, under some circumstances, be communicated with abroad. The undersigned think it due to you, and right to mention the services which may devolve on the office of umpire; but they sincerely and anxiously trust that it may be consistent with your engagements to attend to its duties, and they would be most happy, and conceive themselves fortunate, to hear from you to that effect.

In conclusion, the Undersigned would observe, that as the time during which the Commission is to sit is limited, they should esteem your early answer a personal favour, inasmuch as in the event of your refusal, a contingency which they trust will not arise, a new appointment, or the adoption of the alternative pointed out in the Convention, in itself highly undesirable in every respect, will become necessary.

The Undersigned, &c.

(Signed) EDMUND HORNBY,
Her Majesty's Commissioner.

N. G. UPHAM,
American Commissioner.

No. 6.

Mr. Martin Van Buren to Mr. Hornby and Mr. Upham, declining the appointment of Umpire.

GENTLEMEN, *Florence, October 22,* 1853.

I HAVE had the honour to receive your letter inclosing a copy of a Convention for the adjustment of certain claims between Great Britain and The United States, and informing me that you had agreed upon me as the umpire required to be appointed by the terms of the Convention, to decide finally in case of any disagreement between the Commissioners.

The high character of the parties to the submission, the different relations in which I stand towards them, with the importance of the interests to be adjusted, and the cordiality with which your choice appears to have been made, give to the compliment it conveys a value of which I am by no means insensible. No one can appreciate more highly than I do the importance, not to themselves only, but to the world, of the maintenance of friendly relations between our respective countries; and a satisfactory execution of this Convention cannot fail to exert a most salutary influence in that direction. In view of motives so impressive, I do most sincerely regret to find myself constrained, by considerations which I dare not disregard, to decline the appointment you have done me the honour to make. After spending the principal part of my life in the public service, I have for several years withdrawn myself, not only from all personal participation in public affairs, but from attention to business of every description, save only what has been indispensable to the management of my private affairs. By adhering to this course I have secured to myself a degree of repose suitable to my age and condition, and eminently conducive to my happiness, and nothing could be more repugnant to my feelings than to depart from it now.

Still, if the matters in contestation consisted of a single question, which I could dispose of by one decision, in case

of difference between the Commissioners, I would not, under the circumstances, feel myself at liberty to decline the responsibility of the umpirage.

But my knowledge of the character of Joint Commissions like the present, and their almost invariable tendency to be kept on foot long after the expiration of the time first agreed upon for their conclusion, satisfies me that I ought not, at my time of life, to accept a trust which, besides exposing me serious inconvenience, must control my personal movements for a considerable length of time, and may postpone my return to The United States to a period far beyond that which would be at present anticipated.

Allowing myself to hope that the considerations to which I have adverted will satisfy you that I estimate as I ought the honour which has been conferred upon me, and have not declined its acceptance on inadequate grounds.

I am, &c.

(Signed) M. VAN BUREN.

No. 7.

Mr. Hornby and Mr. Upham to Mr. Martin Van Buren.

SIR, *London, November* 1, 1853.

WE beg to acknowledge the receipt of your letter of the 22nd ultimo, in which you decline, for the reasons therein stated, to take upon yourself the office of umpire under the Mixed Commission. While fully admitting the force and propriety of the considerations which have induced that refusal, we cannot, Sir, help expressing to you our deep regret that you should have deemed them imperative.

In your unbiassed judgment our respective countries undoubtedly would have had the most perfect confidence; claimants we feel convinced would have been satisfied, and, personally, we need hardly assure you of the gratification it would have been to both of us to have had the opportunity of submitting our own opinions to the arbitrament of one in whose experience, high-mindedness, and perfect freedom

from bias and prejudice, we should have deservedly felt the most implicit and relying faith.

Trusting, Sir, that the well-earned retirement and leisure you feel so necessary to your happiness, may most securely and certainly ensure it,

We pray your permission to subscribe ourselves with every sentiment of respect and consideration,

(Signed) EDMUND HORNBY,
Her Majesty's Commissioner.
N. G. UPHAM,
American Commissioner.

No. 8.

Mr. Upham to Mr. Hornby.

SIR, *London, October* 31, 1853.

YOUR letter of the 11th ultimo, signifying your readiness to agree on Mr. Van Buren, required no reply, as the appointment was at once made in conformity to it. The information from him, however, which has just been received, renders it necessary that further proceedings be had on the subject; and I now renew the proposition verbally made to you, on the delivery of my letter of the third instant, that if you could not agree on a selection of some one from the persons there named, I should farther propose Joshua Bates, Esquire, of London, of the firm of Baring Brothers and Company, as umpire.

Mr. Bates is an American-born citizen, who, in early life, gained such reputation for intelligence, energy, honourable character, and business acquirements, as to cause a demand for his services in the leading banking-house of this country, and the world. His long residence in England in that position, and his great success, has established him here permanently as his adopted home, and has given him a standing and character that should impart full confidence to the claimants of both countries, as well as to the Governments

themselves, in the intelligence, integrity, and impartiality of his decisions.

I hope you will concur with me in the fitness and propriety of the selection of Mr. Bates, and, with the Commission thus organized, I shall have the fullest confidence in the prospect of a just and satisfactory adjustment of all outstanding claims of the citizens of either Government against our respective countries.

I am, &c.

(Signed) N. G. UPHAM.

No. 9.

Mr. Hornby to Mr. Upham.

SIR, *London, November* 1, 1853.

I HAVE to acknowledge the receipt of your communication of the 31st ultimo, in which, after stating that Mr. Van Buren's refusal to accept the appointment of umpire under the Mixed Commission had rendered the consideration of some other individuals fitted for the office necessary, you propose to me the name of Joshua Bates, Esq., of the firm of Baring Brothers and Co.

In reply, I beg to say that I am quite willing to concur in the nomination of that gentleman, having every confidence in his integrity and unblemished reputation.

I am, &c.

(Signed) EDMUND HORNBY.

No. 10.

Mr. Hornby and Mr. Upham to Mr. Joshua Bates.

9, *Lancaster Place, Strand,*

SIR, *November* 1, 1853.

INCLOSED you will find a copy of the Convention for the adjustment of certain claims between Great Britain and The United States.

The Undersigned have been appointed Commissioners on the part of the two Governments to carry the provisions of the Convention into effect, and the first meeting was holden by them on the 15th of September ultimo. Since that time they have had frequent conferences in reference to the appointment of an umpire, and have, at length, been able to unite cordially in the nomination of yourself, as a gentleman possessing, in a high degree, the essential qualities of an umpire, namely, high character, and freedom from all personal and national bias.

They believe, moreover, that your acceptance of the office would be highly acceptable to their respective peoples and Governments, and they, therefore, venture to express the hope, in apprising you of this selection, that it may be consistent with your engagements to act in the capacity indicated.

In conclusion, the Undersigned would observe that, as the time during which the Commission is to sit is limited, they should esteem your early answer a personal favour, inasmuch, as in the event of your refusal (a contingency which they trust will not arise), a new appointment, or the adoption of the alternative pointed out in the Convention, for many obvious reasons highly undesirable in itself, will become necessary.

The Undersigned, &c.

(Signed) EDMUND HORNBY,
Her Majesty's Commissioner.
N. G. UPHAM,
American Commissioner.

No. 11.

Mr. Bates to Mr. Hornby and Mr. Upham.

8, *Bishop'sgate Street Within,*
November 2, 1853.

GENTLEMEN,

I HAVE received the letter which you have done me the honour to address to me under yesterday's date, by which,

in virtue of the power conveyed by the Convention between Great Britain and The United States, signed at London the 8th of February, 1853, you have appointed me to act as arbitrator or umpire, in case you should not be able to agree in the settlement of any claim or claims embraced in that Convention or Treaty; and I have the honour to inform you that I accept the appointment, and am ready to make the required declaration whenever it may suit you to appoint a day for that purpose.

I have, &c.

(Signed) JOSHUA BATES.

No. 12.

Letter proposing an extension of the term of the Commission, from the Commissioners to the Right Honourable the Earl of Clarendon, Her Majesty's Principal Secretary of State for Foreign Affairs; (a counterpart of which Letter was also addressed to his Excellency James Buchanan, United States' Minister to Great Britain).

Office of the Commission of Claims,

My Lord, 9, *Lancaster Place, June,* 1854.

As Commissioners under the Convention of February, 1853, for settling outstanding claims between Great Britain and The United States, we have the honour to address your Lordship in reference to the duration of the Commission.

By that Convention the Commissioners are bound "to examine and decide upon every claim that may be preferred or laid before them within one year from the day of their first meeting;" and it is further stipulated that the claimants shall have six months, and, under some circumstances, nine months from that day within which to present their claims.

The Commissioners met on the 15th of September last, and the effect of the time granted by the Convention to the claimants within which to present their claims, has been practically, in a great majority of cases, to postpone such

presentment to the last moment, and in some cases the claimants have been unable as yet to complete and present their testimony. Under these circumstances, the year within which the Commissioners are to decide upon the claims is practically reduced to a few months, and, as it may be necessary to call in the assistance of the umpire, in some of the cases (a necessity which the Commissioners trust will not often arise) they feel that it will be impossible for the umpire to devote the necessary time to such referred claims prior to the close of the Commission.

By the provisions of the Convention, all claims accruing since 1814, not presented to the Commissioners, and allowed by them, are to be finally barred. For this reason the Agents for the Governments have adopted the course of presenting all claims on the files of either Government since that time, and though very many of these claims are of a character that have not been urged by either Government, and will be disallowed, yet they all require an examination and decision; while some of the claims in controversy involve principles requiring much labour and investigation. One hundred and twenty cases have been already presented, and amongst them are several claims made on behalf of a great number of individuals, so that, in fact, that number will be the least which the Commissioners will be called upon to decide.

In view, therefore, of the uncertainty of being able to complete the business of the Commission within the time limited, and having regard in such case to the necessity of the Contracting Parties entering into a new Treaty for the purpose of continuing the Commission, a proceeding which will require the ratification of the Senate of The United States, before the close of its present Session the Commissioners respectfully submit to your consideration the expediency of extending the time for the close of the Commission for some brief period, and would express their belief that an extension for the term of four months from the 15th of September next would be sufficient for this purpose.

With this view, and in order more fully to express their

meaning, the Commissioners enclose a draft of such a Convention as in their judgment would effect the object proposed, and they have forwarded a copy of the same to his Excellency James Buchanan, United States' Minister at this Court, with a counterpart of this letter to your Lordship, with an expression of a hope that it may be made at an early day a matter of conference between the two Governments.

With sentiments of the highest consideration and respect,

We are, &c.

(Signed) EDMUND HORNBY,
British Commissioner.

N. G. UPHAM,
United States' Commissioner.

Convention for the extension of the term of the Commission.

In pursuance of the foregoing recommendation, a Convention was entered into between the two Governments for an extension of the term of the Commission agreeably to the draft proposed, which was signed at Washington, July 17th, 1854, and ratifications were exchanged at London, August 18th, 1854, of which due notice was communicated to the Commissioners.

A copy of said Convention will be found in the Journal of the Commissioner's page 73.

1853.

September 16.—The Commissioners proceeded, in compliance with the first Article of the Convention, to the selection of an arbitrator "or umpire, to act in any case or cases on which the Commissioners might differ in opinion." The names of several gentlemen were mentioned on either side, and the subject was deferred for farther consideration.

The mode of notifying claimants of the meeting of the Commissioners, and of the time within which their claims should be presented, was considered; and it was determined that the Commissioners should severally notify their respective Governments of the time and place of meeting of the Commission, and request that such notice should be given by them to claimants of the pendency of the Commission, as they should deem proper, which resolution was duly communicated to the two Governments. The Commissioners then adjourned to meet on Saturday, the seventeenth instant, at half-past twelve.

September 17.—The Commissioners met, pursuant to adjournment, and, after further conference in reference to the appointment of an umpire, adjourned until the morrow.

September 18.—The Commissioners met, pursuant to adjournment, and, having held a long conference on the subject of the umpire to be appointed, adjourned until Monday, the 20th instant, at half-past twelve.

September 20.—The Commissioners agreed that they would communicate to each other, in writing, their opinions relative to the proper qualifications of an umpire, and the nominations they proposed to make, and further adjourned to meet on Thursday, the 22nd instant.

September 22.—The Commissioners met, pursuant to adjournment.

The subject of the future meetings of the Commissioners was taken into consideration, and it was determined that, from and after this date, meetings be holden at the office of the Commissioners, daily, from twelve to three o'clock, until otherwise ordered.

September 25.—The Commissioners attended at the office of the Commission, and again discussed the question of the appointment of an umpire; several names were mentioned on either side, but no decision was arrived at.

September 27.—The Commissioners met to-day, when the subject of the appointment of an umpire was further considered.

Mr. Upham proposed that a secretary or clerk should be appointed to assist the Commissioners.

Mr. Hornby declined to join in the appointment until an umpire had been agreed upon.

September 28.—The subject of the appointment of an umpire was further considered, without, however, any satisfactory result.

September 29.—The Commissioners were occupied all day in discussing the subject of their previous consultations.

September 30.—The Commissioners met again to-day, and, after a long conference, Mr. Hornby proposed that some other gentlemen should be named, on either side, more likely to prove agreeable to both parties; and, in the mean time, Mr. Upham was to write to Mr. Hornby in answer to the last note written to him by that gentleman.

October 1.—The Commissioners were occupied to-day in receiving claimants, and in answering inquiries relative to the time and mode in which claims were to be preferred.

October 3.—The Commissioners received, according to appointment, Mr. Lavie, the Solicitor to the Committee of

Florida Bondholders, and engaged in a long discussion with him as to the mode in which the claims of the bondholders should be brought forward.

October 4.—The Commissioners were occupied all day in discussing the subject of the appointment of an umpire.

October 6 and 10.—The Commissioners attended daily at the office, between these dates, for the purpose of discussing the rules which should be observed by the claimants; and, generally, the arrangements for carrying on the business of the Commission.

October 11.—The Commissioners attended at the office to answer numerous inquiries on the part of claimants.

October 12.—Various letters having passed between the Commissioners relative to the choice of an umpire, which letters are placed on file, they this day agreed on the appointment of his Excellency, Martin Van Buren, late President of The United States, now in Florence, to act as umpire in case of disagreement between them.

October 13.—A joint letter was drawn up and forwarded to Mr. Van Buren, communicating to him his appointment, by the Commissioners, as umpire under the Convention between Great Britain and The United States, of February 8, 1853.

The Commissioners then proceeded to the selection of a secretary, or clerk, in accordance with the sixth Article of the Convention, and Nathaniel L. Upham was appointed, and entered upon the duties of his office.

The clerk was directed to make up the records of the Commission to the present time, from minutes furnished by the Commissioners.

October 14.—The Commissioners decided, to-day, the mode in which the record of the proceedings should be kept, the docket, and other matters in connection with the business of the Commission.

October 15. — The following rules and regulations relative to the transaction of business before the Commissioners were adopted:—

I.—The secretary or clerk shall keep a docket, and enter thereon a list of all claims as soon as they shall be filed, specifying briefly the grounds and nature of such claim.

He shall also keep duplicate records of the proceedings had before the Commissioners, and of the docket of claims filed with them, so that one copy of each shall be supplied to each Government.

II.—Cases shall be considered in order for the action of the Commissioners, whenever they shall be presented to them for their decision, or, if parties or agents for the Governments appear, whenever they shall agree that the same shall be taken up for hearing.

III.—All claims must be presented within six months from the fifteenth of November last, unless reasons be assigned for the delay satisfactory to the Commissioners, and where cases, by leave of the Commissioners, are presented after such time, they will be required to be in order for hearing as soon after presenting the same as may be.

IV.—Cases presented within the first six months where agents for the claimants appear, and which have not been previously disposed of, will be required to be in order for hearing and decision at any time after the said six months the Commissioners may direct.

V.—Claims presented to the Commissioners by the Agents of either Government, will be regarded as presented by their respective Governments, in accordance with the provisions of the Convention.

October 17.—The Commissioners attended at the office, and made arrangements respecting the entry of claims and their custody, and also considered the question of how the documents presented to them as evidence should be authenticated.

October 18.—The Commissioners having met as usual,

John Addison Thomas, Esq., Agent of Claims on the part of the Government of The United States, was introduced, and presented to them his Commission from the Department of State, a copy of which was ordered to be placed on record, which, on being read, is as follows:—

COMMISSION OF THE AGENT ON THE PART OF THE GOVERNMENT OF THE UNITED STATES.

FRANKLIN PIERCE, President of the United States of America, to all who shall see these presents, greeting:—

KNOW ye, that, reposing special trust and confidence in the integrity and ability of John A. Thomas, of New York, I do appoint him, under the Convention with Her Britannic Majesty, of the 8th of February, 1853, on the subject of claims to be Agent of The United States; and do authorize and empower him to execute and fulfil the duties of that office according to law.

And to have and to hold the said office, with all the powers, privileges, and emoluments thereunto of right appertaining unto him, the said John A. Thomas, during the pleasure of the President of The United States.

In testimony whereof I have caused these letters to be made patent, and the seal of The United States to be hereunto affixed.

Given under my hand, at the city of Washington, the nineteenth day of April, in the year of our Lord, one thousand eight hundred and fifty-three, and of the Independence of the United States of America the seventy-seventh.

By the President,

FRANKLIN PIERCE.

W. L. MARCY,

Secretary of State.

October 20.—The Commissioners and General Thomas attended at the office of the Commission to-day, when the course which the Commissioners proposed adopting with reference to the presentation and advocacy of the claims was explained to the Agent of The United States' Government.

October 21.—General Thomas, United States' Agent, presented the statement of, and the testimony in the claim of Messrs. Rogers and Brothers, of Salem, Massachusetts. He also introduced J. C. Bancroft Davis, as private agent of the claimants in the above case.

After a partial hearing, the further consideration of the claim was referred to a future meeting, and the Commissioners adjourned.

October 22.—The Commissioners were occupied all day in examining such papers as had been sent in to them, with the view of making suggestions as to the nature of the evidence that might be required.

October 24.—Mr. Bancroft Davis again attended before the Commissioners, and stated at great length the particulars of the claim which he represented. The Commissioners adjourned the further hearing to the 26th inst.

October 26.—Further conference with Mr. Bancroft Davis relative to the claim of Messrs. Rogers, when Mr. Hornby pointed out several inaccuracies in the dates contained in the statement, and some important errors in the citations of the Acts of New Zealand and New Holland.

October 28.—A letter was received by the Commissioners from Mr. Van Buren, stating his inability to attend to the duties of the office of umpire, on account of other engagements, and declining the acceptance of the appointment, which letter was directed to be placed on file.

October 29.—The Commissioners attended, and conferred together upon the subject of the appointment of an umpire.

October 31.—The Commissioners, after conferring relative to the selection of an umpire in the place of Mr. Van Buren, agreed upon Joshua Bates, Esq., of London, to act as arbitrator or umpire, in case of disagreement between them.

General Thomas presented papers and evidence relative to the seizure and claim of the barque "Jones," and introduced Mr. Rockwell, agent of the claimants, to the Commissioners. A partial hearing was had in reference to the case, when its further consideration was postponed until the Agent appointed by Her Majesty's Government could attend.

November 1.—The Commissioners drew up a joint letter to his Excellency Mr. Van Buren, acknowledging the receipt of his note of October the twenty-second, in which he declined to accept the appointment of umpire.

They further notified, by letter, Mr. Bates of their appointment of him to act as umpire in case of a disagreement between the Commissioners, copies of which letters were ordered to be placed on file.

November 2.—A letter was received from Mr. Bates, accepting the appointment of abritrator or umpire tendered him by the Commissioners.

November 4 *and* 11.—During this interval, the Commissioners attended daily at the Office of the Commission, to give information to claimants relative to the mode in which claims should be brought forward, and Mr. Upham, junior, was instructed to copy and forward letters addressed to claimants at a distance, who had written for information to the Commissioners.

November 14.—Mr. Bates attended the meeting of the Commissioners, and received from them his commission as arbitrator or umpire, which is as follows:—

COPY OF THE UMPIRE'S COMMISSION.

To all and singular to whom these presents shall come greeting.

WHEREAS, a Convention was concluded and signed at London on the eighth day of February, one thousand eight

hundred and fifty-three between Her Britannic Majesty and the United States of America, for the adjustment of certain outstanding claims of citizens of either Government against the other, by which it is provided that one Commissioner shall be named by each of said Governments, with power to investigate and decide upon such claims, and that the said Commissioners shall name some third person to act as arbitrator or umpire in any case or cases on which they may differ in opinion, and Edmund Hornby, Esquire, having been appointed Commissioner on the part of Her Britannic Majesty, and the Honourable Nathaniel G. Upham on the part of The United States, and having been severally duly qualified and entered on the duties of their Commission, and on the thirty-first day of October, 1853, having agreed on Joshua Bates, Esquire, of London, as arbitrator or umpire,

Now, therefore, be it known, that we, the undersigned Commissioners, reposing especial trust and confidence in the impartiality, integrity, and ability of said Joshua Bates, Esquire, do hereby, by virtue of the authority vested in us as aforesaid, appoint him arbitrator or umpire under said Convention, and do authorize and empower him to execute and fulfil the duties of said office, with all the powers and privileges connected therewith, according to the provisions of the Convention.

In witness whereof, we have hereunto severally affixed our signatures, this thirty-first day of October, one thousand eight hundred and fifty-three.

(Signed) EDMUND HORNBY,
Commissioner on the part of Great Britain.

NATHANIEL G. UPHAM,
Commissioner on the part of The United States.

The Umpire then made and subscribed the following solemn Declaration in accordance with the provisions of the first Article of the Convention.

COPY OF THE UMPIRE'S DECLARATION.

I hereby solemnly declare that I will impartially and carefully examine and decide, according to the best of my judgment, and according to justice and equity, without fear, favour, or affection to the Government of Her Britannic Majesty or of The United States, all such claims as may be submitted to me as arbitrator or umpire, by the Commissioners of the said Governments, appointed for the adjustment of certain claims on the part of citizens of either of the said Governments against the other, under a Convention signed at London, February eighth, one thousand eight hundred and fifty three.

In witness whereof, I have this fourteenth day of November, made and subscribed this solemn declaration.

(Signed) JOSHUA BATES.

November 15.—The Commissioners attended at the office for the general dispatch of business, and replied to several letters which were addressed to them.

Thursday, 17.—James Hannen, Esq., attended before the Commissioners, and presented his appointment as Agent of Claims on behalf of the Government of Her Britannic Majesty, a copy of which is as follows:—

VICTORIA R.

Victoria, by the Grace of God, Queen of the United Kingdom of Great Britain and Ireland, Defender of the Faith, &c., &c., &c.

To all and singular to whom these presents shall come greeting.

Whereas a Convention was concluded and signed at London, on the eighth day of February, one thousand eight hundred and fifty three, between us and our good friends, the United States of America, for the settlement of outstanding claims of the one Contracting Party upon the other, by means of a Mixed Commission.

Now, know ye, that we, reposing especial trust and confidence in the approved learning, wisdom, and fidelity of our trusty and well-beloved James Hannen, Esquire, have named, made, constituted, and appointed, and do by these presents name, make, constitute, and appoint him our Agent, under, and pursuant to, the said Convention, and do hereby authorize and empower him to act in that capacity on our part in regard to all claims, which may have been, or which may be, presented to the notice of the Commissioners appointed, or to be appointed by us, and by the President of the United States of America, under and pursuant to the Convention aforesaid.

In witness whereof, we have signed these presents with our royal hand.

Given at our Court at Windsor Castle, the sixteenth day of November, in the year of our Lord one thousand eight hundred and fifty three, and in the seventeenth year of our reign.

By Her Majesty's command:

(Signed) CLARENDON.

November 18.—The Commissioners examined into the evidence in the case of Messrs. Rogers and Co. and conferred thereon, Mr. Hornby pointing out the mistake into which he considered the Messrs. Rogers had fallen when they asserted they had been made the victims of *ex post facto* Legislation.

November 19.—The Commissioners attended at the office and had a long conference with the Agents of the two Governments.

November 21.—The Commissioners attended several appointments made by claimants, and gave them the information they desired generally.

November 22.—The Commissioners attended to transact the business of the Commission.

November 23.—The Agents of the two Governments attended and had a long conference with the Commissioners respecting the mode in which certain claims should be presented, and exchanged the evidence thereon.

November 24.—The Commissioners attended to transact the business of the Commission.

November 26.—The Umpire had a long conference with the Commissioners on the subject of the general nature of the cases likely to be brought before the Commission.

November 28.—Further hearing was had on the claim of Messrs. Rogers and Co.

General Thomas, United States' Agent, offered affidavits on behalf of the owners of the barque "Jones" that their vessel was not engaged in the Slave Trade, and, in addition, a statement of the amount of damage claimed.

He also presented an abstract of the claim of William Cook and others, avowing themselves to be the heirs of one Mrs. Frances Shard, and entitled to such property as she had died possessed of, and which, for want of representatives, it was alleged, had lapsed to the Crown, and was in the possession of Her Britannic Majesty's Government.

November 30.—The Commissioners met to-day, when Mr. Hornby expressed his doubts whether the claim of William Cook and others was within the jurisdiction of the Commission, and a long discussion was had thereon.

December 1.—Mr. Hannen, Agent of Her Majesty's Government, presented to the Commissioners the claim of Messrs. Kerford and Jenkin for losses sustained through a detention by The United States' Army of merchandize forwarded by them to Mexico during the years 1846 and 1847.

December 2.—The Commission was occupied all day in going through the evidence in the case of Messrs. Kerford and Jenkin.

December 3.—Mr. Hannen presented the claim of William McGlinchy for the illegal seizure and detention of certain papers and property by the United States' Custom-house Officers on the River St. John.

December 5.—The Commissioners attended as usual at the office of the Commission.

December 6.—The claim of William Allen for the seizure and detention, at San Francisco, of the "Joseph Albino," by United States' Custom-house Officers, under charge of smuggling, and submitted to the Commissioners, and was disallowed.

The claim of Messrs. Loback and Co., for the seizure of logwood at Tabasco, by United States' Naval Officers, was also submitted to the Commissioners and was disallowed.

December 7.—Mr. Hannen presented the claim of Messrs. Calmont and Co., for the seizure of goods by Mexicans, while under convoy of United States' forces, which was disallowed.

A claim was then presented for the return of the duties paid on the goods seized, which was deferred for consideration.

December 10.—The Commissioners attended at the office, and examined into the evidence of the case of the "Joseph Albino."

As also into that presented by Messrs. Loback and Co., and conferred on both of these cases.

December 12.—The Commissioners met to-day, and again discussed the evidence, and obtained further information from the agents respecting the claims.

December 13.—Several of the claimants attended before the Commissioners to ascertain when their claims could be heard. After some discussion, it was ordered that a full statement of each claim, and a résumé of the evidence by

which it was to be supported should be sent in to the Commissioners in the first instance.

December 14.—The Commissioners attended as usual for the general transaction of the business of the Commission.

December 15.—Mr. Hannen attended, and took exception to the jurisdiction of the Commissioners in the case of William Cook and others, and presented a protest against the same, which was ordered to be placed on file.

December 16.—The Commissioners conferred together on the claims submitted, and required further evidence to be put in.

December 17.—Mr. Clark, special agent of William Cook and others, attended before the Commissioners, and discussed at great length the question of jurisdiction raised by Mr. Hannen.

December 19.—Mr. Hannen and General Thomas argued at considerable length several points arising out of the words of the Convention relative to the jurisdiction conferred on the Commissioners. The Commissioners reserved their decision.

December 21.—The Commissioners decided to-day that claims which had been presented to either Government for its interposition with the other, whether the same had ever been presented to the notice of the other Government or not were within their jurisdiction.

December 22.—After conferring with several of the claimants the Commissioners adjourned until the 30th instant.

December 30.—Mr. Hannen presented the claim of Christopher Richardson for the seizure of the "Frances and Eliza," of New Orleans; and the claim of Messrs. McCalmont and Greaves for excess of duties levied on their goods at Vera Cruz.

1854.

January 3.—Mr. Hannen presented the claim of George Buckham for the seizure and sale of the brig "Lady Shaw Stewart," at San Francisco; for alleged violation of the Revenue Laws.

January 7.—Mr. Hannen presented the claim of Francis Watson and others for lands in the territory, formerly claimed by New Brunswick, but now, by adjustment of the boundary, situated in the State of Maine.

January 9.—Mr. Hannen presented the claim of Lord Cartaret to lands in North and South Carolina.

January 10.—Mr. Hannen presented the claim of the Earl of Dartmouth to lands in East Florida.

January 13.—Mr. Hannen presented the claim of John Potts for damages sustained in Chihuahua, in Mexico, from the American forces.

January 16.—Mr. Hannen presented the claim of the Messrs, Laurents for the seizure of property in Mexico by General Scott.

January 20.—Mr. Hannen presented the claim of John Lidgett for the alleged illegal seizure of the ship "Albion" by the Custom-house authorities of the territory of Oregon.

January 24.—General Thomas presented the claim of Thomas Tyson, of Baltimore, for the seizure of the schooner "Fidelity" at Sierra Leone by the collector of that port, in 1825.

January 27.—Mr. Hannen presented the claim of Thomas Rider to remuneration for losses and injury sustained by his arrest and detention at Matamoras by the military authorities of The United States.

February 9.—General Thomas presented the claim of the fishing schooner "Caroline Knight" for its illegal seizure and sale at Prince Edward's Island by the officers of Her Majesty's Government.

February 17.—Mr. Hannen presented the claim of Messrs. Whitemill and Lyon for damage caused by their brigantine, the "Confidence," being run down in the Straits of Gibraltar by The United States' frigate of war "Constitution," in December 1850.

February 23.—General Thomas presented the affidavits of William Mayhew relative to the claim of Messrs. Rogers and Brothers, which were ordered to be placed on file.

Mr. Hannen presented the claim of William Patterson for injuries received from the United States' forces at Matamoras.

February 25.—The Commissioners had a long conference on the claim of the Messrs. Laurent.

February 27.—Further hearing was had relative to the claim of Messrs. Rogers and Brothers, which was submitted.

The claim of Thomas Rider was then argued by the agents, and after some discussion deferred for further consideration.

February 28.—The Commissioners discussed the claim of Messrs. Laurent, when Mr. Upham doubted whether the same was within the jurisdiction of the Commissioners, the Messrs. Laurent being domiciled in Mexico. Mr. Hornby combated this view, on the ground that domicile alone could not denationalize a subject or citizen of either country.

March 1.—A further long discussion was had on the case of the "Frances and Eliza," when Mr. Upham suggested that as, in his opinion, there was a probable ground of seizure, The United States' Government could not be held responsible for subsequent losses.

March 4.—The Commissioners again attended at the office of the Commission, and minutely examined the evidence offered in the several cases submitted to them, and decided that the agents should argue the question of damage in the case of the Messrs. Rogers.

March 6.—The case of the "Frances and Eliza," which vessel was seized at New Orleans by The United States' Revenue Officers, was considered.

Mr. Hannen presented the claim of Duncan Gibb, for the seizure of the ship "Baron Renfrew," in California, and the claim of James Crooks, for amount of judgment of the Court of Admiralty, in the case of the "Lord Nelson," which was seized prior to the war of 1812, by The United States' ship of war "Oneida," on Lake Ontario.

March 13.—Mr. Hannen presented on behalf of the Government of Her Majesty the following claims:—

Messrs. Glen and Co.
Maurice, Evans and Co.
Barque Pearl.
The ship Herald.
Charles Green.
The James Mitchell.
Hudson Bay Company.
Claim for drawback.
For supplies furnished American troops.
For seizure of the schooner Cadboro'.
For interruption of trade of the Prince of Wales.
For return of certain Revenue duties.
For seizure of the Beaver and Marydare.
The Union.
Joseph Wilson.
The Young Dixon.
Godfrey Pattison and Co.
Messrs. Butterfield and Brothers.
The Irene.
Messrs. Cotesworth, Powell and Pryor.

H. U. Derwig and others—Florida Bondholders.
Miller and Mackintosh.
George Houghton.
Honourable W. Black.
Sam. C. Johnston.
Thomas Whyte.
Alexander McLeod.
P. B. Murphy.
Charles B. Hall.
The Mary Anne.
The Sir Robert Peel.
The Great Western Steamship Company.
G. Rotchford Clarke.
Representatives of Colonel Elias Durnford.
Messrs. Baker and Co.
Anglo-Mexican Mint Co.
The Crosthwaite.
Shipowners' Society.
The Prosperity.
The Duckenfield.
The Science.

March 14.—General Thomas presented Papers relative to the following claims on behalf of the Government of The United States :—

Brig Creole.
Schooner John.
Brig Enterprise.
Schooner Washington.
The Levan Lank.
Brigantine Volusia.
Brig Cyrus.
Schooner Director.
The Maria Dolores.
The Tigris and Seamew.
The Only Son.
The Julius and Edward.
Brig Lawrence.

Brig Charlotte.
The Jubilee.
John McClure and others.
The Cicero.
The Olive Branch.
Brig Evelina.
Schooner Hero.
Schooner Washington, seized 1818.
Schooner Argus.
The Robert.
Schooner Hermosa.
Barque John A. Robb.
The Joseph Cowperthwait.
Schooner Pallas.
The Elvira.
For return of duties levied on woollen goods.
George Atwood.

March 15.—The following claims for return of money collected for duties in New York were presented by Mr. Hannen, viz., of

James Buckley.
Arnon Buckley.
James Mallalieu.
Francis S. Buckley.
Charles Kenworthy.
George Shaw.
Samuel Bradbury.
John Platt.
Joseph Wrigley.
William Broadbent.
Charles Clifton.
James Shaw.
Amon Schofield.

He also presented the claims of

William Bottomley's Executors.
James Rogers.

The Executors of James Holford.
Sam. Shaw.
Sam. Bradbury.
Platt and Duncan.
George Shaw.
John Taylor.
Alfred T. Wood.

Mr. Hannen also presented the claims of Charles Wirgman, agent of Timothy Wiggin, J. Knight and Co., and of fifty-one others, for repayment of excess of duties charged on cotton goods in ports of The United States.

Hearing was had in the "Frances and Eliza," and the case was submitted for the decision of the Commissioners.

March 17.—Further hearing was had in the case of the barque "Jones," which vessel had been seized at St. Helena on charge of being engaged in the Slave Trade, and for being in British waters without a national character.

March 18.—The hearing in the case of the barque "Jones," was continued, and the claim was finally submitted to the Commissioners.

March 21.—Mr. Hannen presented, by leave, the claim of Messrs. Weymouth and others, respecting certain bonds guaranteed by the territory of Florida.

Hearing was had on the claim of Duncan Gibb, when the case was closed and submitted for decision.

March 23.—Hearing was had in the claim of Thomas Tyson, relative to the seizure of the schooner "Fidelity," at Sierra Leone, on a charge of having smuggled goods on a previous voyage, and the case was submitted.

The claim of James Crooks, relative to the "Lord Nelson," was also heard and submitted.

March 24.— After a long conference, the Commissioners were unable to agree on the question of damage in the cases of the "Frances and Eliza," the "Baron Renfrew," and the

Messrs. Rogers. Mr. Upham being of opinion that in the two former cases, the seizures being justifiable, and founded on probable cause, The United States were not liable for the damages alleged to have been sustained, and in the latter, that the sudden change from a state of savagedom to comparative civilization ought not to be allowed to prejudice the rights of foreign merchants. Mr. Hornby disagreed in this view of these claims, considering that in the last case the dates showed the change was not only to have been anticipated, but that quite sufficient time had elapsed between the passing of the laws and the sailing of the claimant's cargoes, for them to have known the provisions of the Revenue in respect of such cargoes.

March 27.—The Commissioners took into consideration the voluminous evidence submitted in the case of the "Jones," and having examined it, agreed to draw up minutes of their opinions with a view to a further conference.

March 28.—The Commissioners attended to-day at the office, and received several of the claimants.

March 29.—The Commissioners attended at the office to-day, and examined the evidence in the case of the "Fidelity," submitted by General Thomas.

March 30.—The Commissioners attended and held a long conference on the several land claims which had been submitted to them, and agreed that inasmuch as there existed competent courts in The United States for the investigation of all questions of title to lands within their jurisdiction, it was not competent for the Commissioners to enter into the merits of these claims, and they accordingly rejected them.

March 31.—Mr. Hornby informed Mr. Upham that having gone through the evidence in the case of the Messrs. Rogers, he was of opinion that if it could be proved they had actually sustained a *bonâ fide* loss, he was, as a matter of indulgence, willing to indemnify them; but that under the

circumstances he could not agree to compensate them for loss of profit, when it was clear that they had infringed the Revenue Laws of New Zealand. Mr. Upham took time to consider the case.

April 1.—Mr. Hornby and Mr. Upham went through the evidence in the case of the "Baron Renfrew," but were unable on this occasion to agree upon it. They discussed also the case of the "Lord Nelson," and agreed that it must be dismissed. As Mr. Hannen, however, had intimated that he had another claim to submit in the same case, should the opinion of the Commissioners be against him on the first, it was agreed that he should be notified of the result of the deliberations of the Commissioners.

April 3.—The case of William Cook and others was assigned for hearing on the 13th of April.

Hearing was had by the agents in the case of the "Albion," John Lidgett owner.

April 4.—The Commissioners attended and examined the evidence in the case of the "Albion."

April 5.—Letters were submitted, by General Thomas, from the State Department, by which it appeared that the case of William McGlinchy, which had been heard on the 3rd of December last, had been settled.

Hearing was then had on the question of the jurisdiction of the Court in the claim of the Messrs. Laurent, and, after full argument of the same, it was submitted to the Commissioners.

April 7.—Long discussion of the Commissioners on the question of jurisdiction raised in the case of the Messrs. Laurent.

April 8.—General Thomas made some remarks in continuation of the hearing in the case of the Messrs. Laurent.

Hearing was had on the claim of Joseph Wilson, an officer of the Canadian Government, on account of an alleged

illegal arrest in Michigan, and the case was submitted to the Commissioners.

The claim of Alfred T. Wood for compensation, in consequence of his being arrested and detained by citizens of the State of Maine while resident in New Brunswick, was also submitted.

April 10.—The Commissioners attended to-day and conferred together on the cases of "Joseph Wilson" and "Alfred T. Wood," and adjourned to go through the evidence.

April 11.—General Thomas presented affidavits concerning the goods of certain parties on board the "Jones."

Hearing was had on the claim of Samuel Johnston for damage on a charge of violating the Immigration Act, and the case was submitted for decision.

Mr. Hannen was heard in the claim of Robert Hill for damage arising from the capture of the "Union" by an American ship of war after peace had taken place, and the same was submitted, after a few remarks by the Agent of The United States' Government, and disallowed.

The claim of Riddell Robson for the seizure and detention of the "Irene" was also submitted for decision and disallowed.

April 13 to 16.—Between these dates the Commissioners attended at the office and examined the evidence submitted in the cases of the "Jones," "Samuel Johnston," "Robert Hill" and "Riddell Robson," and held several conferences thereon.

April 20.—J. L. Clarke, Esq., attended before the Commissioners and submitted, as the attorney of the claimants, an argument in answer to the protest filed by the Agent of Her Majesty's Government as to the claim of William Cook and others.

Mr. Hannen proposed to reply in writing, and the case was adjourned for this purpose.

April 22.—General Thomas presented, by leave, the claim of Amos Frazer as to the brig "Douglas."

The Commissioners having been unable to agree in the case of the barque "Jones," opinions were severally delivered by them, and the case was directed to be committed to the decision of the umpire.

Some discussion was had on the case of McCalmont and Greaves, when the farther hearing of the same was postponed.

April 25.—The hearing, on the claim of Messrs. McCalmont and Greaves, was continued, and the case was finally submitted for the decision of the Commissioners.

April 26.—The Commissioners attended to-day, and examined the evidence in the case of the "Douglas;" and also that presented by Messrs. McCalmont and Greaves.

April 27.—The Commissioners attended at the office, and held a long conference on the cases of the "Douglas," and McCalmont and Greaves, Mr. Hornby expressing doubts as to the propriety of further considering the former case after the correspondence had between the two Governments.

April 29.—The Commissioners attended for the general transaction of business of the Commission.

May 1.—The Commissioners further discussed the claim of McCalmont and Co., when Mr. Upham intimated that he did not see how it could be maintained.

May 2.—The Commissioners took into their consideration, to-day, the protests filed by the Agents of the two Governments, and the special agent of the claimant in the case of William Cook and others.

May 3.—The Commissioners attended for the general transaction of business.

May 4.—The Commissioners had a long conference with Mr. Hannen and Mr. Clarke relative to the course taken by

the Crown of England in respect of the estates of intestates dying without next of kin.

May 5.—Hearing was had in the claim of Mr. G. Rotchford Clarke for the recovery, or the value, of lands in Vermont, granted prior to the admission of that State into the Union.

May 6.—Mr. Clarke was farther heard relative to his claim to lands now in the State of Vermont, and the case was submitted for the decision of the Commissioners.

May 8.—The Commissioners attended, and went through the voluminous evidence adduced in support of his claim by Mr. G. R. Clarke.

May 10.—Mr. John L. Clarke, counsel in the case of the schooner "John," captured after peace was concluded in 1814, was heard, and the claim submitted.

Mr. Hannen read his reply to the argument filed by Mr. Clarke, in the case of William Cook and others.

May 11.—The Commissioners attended and examined the evidence in the case of the "John."

May 13.—Hearing was had as to the brig "Lady Shaw Stewart," seized at San Francisco.

General Thomas submitted, by leave, additional evidence in the case of the "Frances and Eliza."

Hearing was had in the case of the ship "Albion," Lidgett, owner.

A memorial was also submitted by General Thomas, in the claim of the brig "Douglas."

The case of the "Enterprise" was assigned for hearing on Tuesday, the 23rd of May instant.

May 15.—Mr. Hannen made further remarks as to the question of damage in the brig "Lady Shaw Stewart," and the case was submitted.

General Thomas introduced, by leave, the affidavit of Mr. Frye, in the case of the barque "Jones."

May 16.—The Commissioners attended, and had a long discussion on the case of the "John."

May 17.—Conference on the case of the "John" continued.

May 18.—Hearing was had in the case of the barque "Pearl," James Tindale owner, and the case was submitted.

Mr. Hannen was heard in the claim of Messrs. McCalmont and Co., for return of duties paid on goods, afterwards seized by Americans.

The umpire met the Commissioners by their appointment, and arrangements were made as to the mode of proceeding in the cases to be submitted for his decision.

The papers in the claim of the barque "Jones," on which the Commissioners had agreed with the opinions delivered by them, were directed to be sent to the umpire.

May 20.—The Commissioners attended and examined the evidence in support of the claim for damages made in the case of the "Lady Shaw Stewart," but failed to agree upon an amount.

May 22.—Long conference to-day by the Commissioners.

May 23.—Mr. Hannen presented a memorial on behalf of James Crooks, in case of the "Lord Nelson."

Various English and American claims for returns of duties were presented by Messrs. Hannen and Thomas.

Hearing was commenced in the case of the brig "Enterprise."

May 24.—Hearing in the "Enterprise" was continued and concluded, and the case was submitted for the decision of the Commissioners.

May 25.—The Commissioners attended, and went through

the evidence in the case of the "Enterprise," and conferred thereon.

May 26.—The claims of the representatives of Colonel Elias Durnford, and the claim of Thomas Whyte to certain lands in Florida, was submitted by Mr. Hannen.

Hearing was also had in the claims of Honourable W. Black, and of Francis Watson and others, to lands in the State of Maine, and in the claim of George Houghton, for specie taken from him by pirates, who were subsequently captured by a United States' vessel of war.

Mr. Hannen also presented, by leave, the claim of certain individual holders of bonds guaranteed by the territory of Florida.

May 29.—The Commissioners attended at the office to-day, and compared notes in the case of the "John," "Lady Shaw Stewart," and "Douglas."

May 30.—Long conference of the Commissioners in the three cases they had discussed yesterday.

June 1.—General Thomas presented, by leave of the Commissioners, the claim of Robert Roberts, for the seizure of the ship "Amelia," in January, 1815.

June 3.—Hearing was had in the case of the brig "Creole," the ship "Amelia," and the claim of James Young, for slaves captured during the war, and sold in the West Indies by British Government Officers. These claims were then submitted to the Commissioners for decision.

The case of William Cook and others, was assigned for Wednesday, the 19th instant

June 5.—The Commissioners attended, and went through the lengthy evidence adduced in the case of the "Enterprise."

June 6.—The Commissioners attended, and discussed together the case of the "Enterprise," and then adjourned its further consideration for a few days.

June 7.—In the case of the barque "Jones," General Thomas presented certain papers and correspondence from the Legation, which were directed to be furnished to the umpire.

He also presented the correspondence of the Governments in the case of the "Creole."

Mr. Hannen presented the claim of Messrs. Dawson and others, for bonds issued by the Republic of Texas.

The case of the "Confidence" was assigned for hearing on Saturday, the 10th, and the cases of Pattison and Mitchell on Thursday, the 29th instant.

June 8.—The Commissioners attended, and read through the lengthy correspondence in the case of the "Creole," and agreed to make and compare notes of their opinions on the Slave cases generally.

June 9.—General Thomas, by leave, presented the claim of the brig "Brookline" for the seizure in 1848, and removal of one of her crew, as a deserter, from Her Majesty's Navy.

June 10.—A hearing was had in the case of the brigantine "Confidence," by Dr. Adams, the special agent of the claimants, and General Thomas.

General Thomas then, by leave, presented two claims for property on board the brig "Creole," and the claim of Henry Schieffelin, for the detention and refusal of the British Government to carry out an award of the Court of Admiralty.

June 12.—The Commissioners took into consideration the propriety of requesting of the two Governments an extension of the time originally assigned for the termination of the Commission, the better to enable them to dispose of the very great and unanticipated amount of business, which had devolved upon them, and a letter was drawn up by them to the American Minister, and to Her Majesty's principal Secretary of State for Foreign Affairs, recommending the extension of the Commission for four months.

June 13. —The Commissioners attended, and discussed the claim of Henry Schieffelin. Mr. Upham being of opinion that it was within the terms of the Convention, Mr. Hornby took a different view, and it was agreed that they should adjourn any further consideration of the claim until Mr. Lovell, the special agent of the claimant, could attend.

June 14.—General Thomas, by leave, presented the memorial of Charles Barry, in behalf of claims for returns of duties on woollens, levied contrary to the Treaty of 1815, and also the claims of James Heard, and of the Merchants' Insurance Company of New Orleans to property in slaves on board the brig "Creole."

Mr. Hannen presented the claim of Charles Uhde for the seizure of goods by The United States' Army; and a memorial of Andrew Mitchell, relative to the return of duties levied contrary to the Treaty of 1815.

Hearing was had in the claim of William Cook and others by Mr. John L. Clarke, attorney for the claimants, and the case was submitted to the Commissioners.

June 15.—Mr. Hannen presented a memorial on behalf of Messrs. Godfrey, Pattison, and Co., for interest on their claim.

The Commissioners received a letter from the counsel in the claim of the Florida bondholders, asking for a postponement of the hearing in their case to June 21st, which was agreed to, and the Secretary was directed to request the attendance of the umpire at that time.

Mr. Charles Barry, by leave, presented claims relative to the return of duties on woollens.

June 16.—The Commissioners conferred to-day with Mr. Charles Barry relative to his claims, when it appeared that they were in course of settlement by the British Government, he having presented them chiefly out of abundant caution to prevent his claim being barred by the Convention. It appeared, however, from the evidence Mr. Barry produced,

that the duties had been paid by English firms, on account of American houses. Hitherto his claim had been on behalf of the individuals who had actually paid the money to have it returned to them by the British Government. Ordered to stand adjourned for a fortnight.

June 19.—General Thomas submitted by permission papers in the cases of the brig "Enterprise," and schooner "Hermosa," and in that of the "Brookline."

In the case of the "Confidence," Mr. Hannen presented a letter written by one of the sailors on board, dated at Lisbon.

The case of Platt and Duncan was assigned for hearing on Saturday, July 1st, at 11 o'clock.

June 20.—The Commissioners attended at the office for the transaction of the business of the Commission.

June 21.—Hearing was had in the claim of the Florida bondholders by Mr. Rolt, Queen's Counsel, and Mr. Cairns, special agents and counsel of the claimants, and the case was committed to the decision of the Commissioners.

Mr. Bates, the umpire, attended on the hearing.

June 22.—The Commissioners attended and examined the evidence in the case of Messrs. Godfrey Pattison, of Glasgow, and directed that the claimants should attend them for the purpose of explaining the same.

June 24.—In the claim of Messrs. Kerford and Jenkin for damages, caused through delays of a caravan of merchandize by United Stated forces in Mexico, a hearing was had and the case submitted.

June 27.—Long conference and discussion by the Commissioners in the claim of Messrs. Kerford and Jenkin.

June 29.—The claims of Messrs. Pattison and Co., and of Andrew Mitchell, for return of duties levied contrary to Treaty of 1815, were heard and submitted.

In the claim or the brig "Brookline" a hearing was also had, and the case was submitted.

July 1.—In the claim of Messrs. Platt and Duncan, hearing was had before the Commissioners by Mr. Butt, Queen's Counsel, special agent and counsel of the claimants, and the case was submitted for decision.

July 3.—Further observations were this morning made by leave of the Commissioners in the case of Messrs. Platt and Duncan, and some papers were handed in.

July 4.—The Commissioners began to-day to examine the mass of evidence presented to them in the case of Messrs. Platt and Duncan, respecting frauds by the Collector of Customs at New York.

July 5.—General Thomas presented for hearing the claim of the brigantine "Volusia," for seizure and condemnation on charge of being concerned in the Slave Trade which was submitted.

Hearing was had in the claim of the Great Western Steam Ship Company for return of duties paid on coals used at sea, and the case was submitted.

July 6.—The Commissioners attended, and had a long conference with the agents on the several cases submitted.

July 8.—Hearing was had in the claim of Messrs. Butterfield and Brothers, and the case was submitted.

General Thomas, on behalf of the claimants, presented the protest of the Captain in the case of the "Volusia."

Hearing was had in the claims of Timothy Wiggins and others (Wrigman, agent), and in the claim of J. P. Oldfield and Co., and the cases were submitted for decision.

July 10.—The Commissioners attended at the office to-day, and continued their investigation of the evidence in Platt and Duncan's case.

Mr. Hornby handed in to Mr. Upham his opinions on the merits of the cases that had been submitted to them.

July 12.—The claim of the executors of James Holford was assigned for hearing July 18th.

Mr. Hannen presented affidavits in the case of Joseph Wilson, heard April 8th, 1854.

Hearing was heard in the claim of the owners of the schooner "Caroline Knight," for seizure of the same in 1852, and the case was submitted to the Commissioners.

July 13.—The Commissioners attended to-day at the office of the Commission, and having completed their investigation of the evidence adduced in the case of Messrs. Platt and Duncan conferred thereon, when Mr. Hornby stated, that, in his opinion, irrespective of the objections which had been raised on the score of citizenship, which he did not think entitled to weight, the claimants ought to have followed out their remedies in the courts of The United States, and that, moreover, looking at the limited authority and powers of the Commissioners appointed by The United States' Government to inquire into the conduct of Mr. Hoyt, he thought that their reports, as well as the evidence taken by them, ought to be received with great caution.

July 14.—The Commissioners held a long conference in the claim of Messrs. Platt and Duncan.

July 15.—The claims of the brig "Crosthwaite," the "Prosperity," the ship "Science," and the "Duckenfield," was submitted to the Commissioners.

Hearing was had in the case of the "John A. Robb," which was submitted.

In the claims of the "Argus," and "Washington," General Thomas was heard as to the interpretation of the Treaty of 1818, relative to the Fisheries, and Mr. Hannen had leave to reply at a future time.

The case of the "Maria Dolores" was assigned for August the 9th instant.

July 17.—The Commissioners were occupied the whole of the day in discussing the claims of the Florida bondholders.

July 18.—Hearing was had on behalf of the executors of James Holford, relative to the payment of Texan bonds, by Mr. Cairns, special agent of the claimants.

General Thomas read a protest against the jurisdiction of Commissioners over the case which was directed to be placed on file.

The case of Messrs. Dawson and others was assigned for hearing on Friday the 28th, and those of the Hudson's Bay Company on Saturday the 29th instant.

July 19.—Long conference between the Commissioners on the case of the Florida bondholders.

July 20.—Mr. Bates attended the Commissioners to confer with them on the cases submitted to him. Long discussion with him on the case of the "Frances and Eliza," and the "Baron Renfrew."

July 21.—The claim of the "Cicero," for seizure and detention, in 1809, was rejected as being without the jurisdiction of the Commission.

The claims of the "Joseph Cowperthwait," for detention and search at Cape Coast Castle; of the brig "Charlotte," for refusal of the Admiralty Court to award costs for its detention; and of the brig "Douglas," for detention, and being taken out of its course on the coast of Africa, were severally heard and submitted.

July 22.—The Commissioners conferred together on the case of the brig "Douglas," Mr. Hornby being willing, as the British Government had offered to pay damages, if the case were pressed by The United States, to give six hundred dollars, but refused to give more, as it was clear, from the evidence, that the "Douglas" was engaged in the Slave Trade.

Mr. Upham thought they were entitled to what they asked.

July 24.—In the claim of William Cook and others, the Commissioners decided that the claim is not included within the terms of the Convention; and it was, therefore, dismissed on the ground of want of jurisdiction.

July 28.—The claim of Phillip Dawson and others, relative to Texas Bonds, was argued by Mr. Cairns.

Exception was taken by General Thomas to jurisdiction of the Commissioners, on the ground that Mr. Dawson was a naturalized citizen of The United States. General Thomas filed, by leave, an affidavit in the case of the brig "Douglas."

July 29.—Hearing was had in the several claims of the Hudson Bay Company for detention of the steamer "Beaver;" for the prevention of trade on the Columbia by their steamer "Prince of Wales;" for expenditures in obtaining release of persons taken captive by the Indians; and for the payment of drawback on goods re-exported from Oregon.

The claims of said Company for the refunding of duties levied on live stock, for the seizure of the schooner "Cadboro'," and their brigantine "Mary Dare," were withdrawn.

August 1.—The claim for return of duties levied between 1815 and 1823, was taken up for hearing, and the letter of Mr. Everett, relative to the effect of the Treaty on the duty imposed on rough rice, was read, and placed with the papers.

The cases of the "Washington" and "Argus," involving the fishery question, was discussed, and the claims submitted for decision.

August 2.—In the claim of the brig "Cyrus," Dumas, owner, seized and detained on the coast of Africa on charge

of being concerned in the Slave Trade; a hearing was had, and the case was submitted.

August 3.—The Commissioners discussed the Woollen Duties claims, when Mr. Hornby decided that further and more complete evidence of ownership or property in the goods must be given before the claim could be allowed.

August 5.—The Commissioners attended to-day at the office, when Mr. Upham informed Mr. Hornby that he could not decide in favour of Mr. Holford's claim, and that it must go to the umpire.

August 7.—At the meeting of the Commissioners, Mr. Upham informed Mr. Hornby that he could not agree with him in the case of the Florida bondholders, nor in that either of the "Confidence," "Volusia," or the three fishery cases.

August 8.—Long discussion between the Commissioners on the case of the "John," when Mr. Hornby intimated his opinion that, as a matter of indulgence and equity, he thought the claim ought to be allowed when reduced to a fair amount, with interest, from the date of the application to the British Government. Mr. Upham thought that interest ought to run from date of seizure; and, accordingly, Mr. Bates was requested to give his opinion on the amount of damage sustained, and to decide from what date interest was to run.

August 9.—In the claim of the "Maria Dolores," Colonel Aspinwall, agent of the parties, appeared, and made a statement of the facts, and the case was submitted.

August 10.—The Commissioners met to-day and held a conference with the agents on the evidence adduced in several of the cases which had been heard and submitted to them.

August 11.—The Commissioners met to-day and delivered

several opinions on the cases previously submitted to them for their decision.

August 14.—The Commissioners met to-day to confer with the umpire on several of the cases submitted to him.

August 16.—Hearing was had in the case of the schooner "Levin Lank," James Sullivan, owner, for the seizure and subsequent condemnation of the same at St. Helena.

August 17.—The claim of John McClure and others, relative to the removal of slaves from Cumberland Island, was heard. Also the claim of Henry Schieffelin, by Mr. Lovel, on the question of the jurisdiction of the Commissioners.

General Thomas placed on file a copy of his protest as to the Texas Bond claims, made by him on Friday the 28th ultimo.

August 18.—The Commissioners received information from the Department of State, at Washington, that the time for the close of the Commission had been extended for four months, by a Convention entered into between Great Britain and the United States of America.

A copy of this Convention was forwarded to the Commissioners by Her Britannic Majesty's Secretary of State for Foreign Affairs, which being read is as follows:—

Convention extending the term allowed for the operations of the Mixed Commission established under the Convention of February 8, 1853, *for the mutual settlement of claims.*

Whereas, a Convention was concluded on the 8th day of February, 1853, between Her Britannic Majesty and the United States of America, for the Settlement of outstanding claims by a Mixed Commission, limited to endure for twelve months from the day of the first meeting of the Commissioners. And whereas, doubts have arisen as to the practi-

cability of the business of the said Commission being concluded within the period assigned; Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, and the President of The United States, are desirous that the time originally fixed for the duration of the Commission should be extended, and to this end have named Plenipotentiaries to agree upon the best mode of effecting this object, that is to say;

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, John Fiennes Crampton, Esquire, Her Majesty's Envoy Extraordinary and Minister Plenipotentiary at Washington; and

The President of The United States, William L. Marcy, Secretary of the State of The United States; who have agreed as follows:—

ARTICLE I.—The High Contracting Parties agree that the time limited in the Convention above referred to, for the termination of the Commission shall be extended for a period not exceeding four months from the 15th of September next, should such extension be deemed necessary by the Commissioners or the umpire, in case of their disagreement, it being agreed that nothing contained in this Article shall in anywise alter or extend the time originally fixed in the said Convention, for the presentation of claims to the Commissioners.

ARTICLE II.—The present Convention shall be ratified, and the ratifications shall be exchanged at London as soon as possible within four months from the date thereof.

In witness whereof, the respective Plenipotentiaries have signed the same, and have affixed thereto the seals of their arms.

Done at Washington, the seventeenth day of July, in the year of our Lord one thousand eight hundred and fifty-four.

(L. S.) JOHN F. CRAMPTON.
(L. S.) W. L. MARCY.

August 20.—The Commissioners attended to-day, and delivered several opinions on the cases submitted to them, and held a long conference with the umpire.

August 22.—The Commissioners adjourned to Monday, the 25th of September, instant.

September 25.—Mr. Hannen asked permission for Alexander McLeod, who was desirous of leaving for Canada, to make a statement relative to his claim before the Commissioners.

In the claim of the brig "Lawrence," Colonel Aspinwall, was heard as agent of the claimants, and the case was adjourned to Friday, October 6th.

September 26.—The Commissioners being unable to agree in the cases of the "Enterprise," "Hermosa," and "Creole;" the "Washington," "Argus," and "Director," as well as in the case of the Messrs. Laurent, severally delivered their opinions.

These cases were then ordered to be committed to the decision of the umpire.

September 27.—In accordance with the permission of the Commissioners, given on the 25th ult., Mr. McLeod made a statement before them relative to his claim, it being understood that the question, whether or not the claim was properly before the Commission, should not be prejudiced by such proceeding.

Mr. Bates called, and had a consultation with the Commissioners, and the case of the Messrs. Laurent was assigned for hearing, before the umpire, for Thursday, October the 5th instant.

October 4.—Further hearing was had in the claim of Henry Schieffelin by Mr. Lovell, special agent for the claimants.

October 5.—Agreeably to the appointment made on the 27th ultimo, hearing was had on the claim of the Messrs. Laurent, before the umpire, and the case was submitted.

The claims of the "Washington," "Argus" and others, were assigned for hearing on Wednesday, the 11th instant.

October 6.—In the case of the brig "Lawrence," Colonel Aspinwall, special agent of the claimants, had a further hearing.

General Thomas submitted a paper relative to the case of the brig "Confidence."

He also read a letter from the State Department, relative to the suits brought for violations of the Revenue Laws, on which certain claims before the Commission are founded, and relative to the return of duties on coals used at sea, on which drawback is claimed.

The claim of the "Evelina," was brought up for hearing, and the case submitted. Discussion was had as to the amount of damages in the case of the "Tigris and Seamew."

October 10.—Mr. Spinks appeared, and Wednesday, November 1st, was assigned for the reopening of the case of Messrs. Platt and Duncan.

October 11.—Hearing was had before the umpire by the respective agents in the claims of the "Washington," "Argus," and others, as to the interpretation of the Convention of 1818, relative to the fisheries, and the cases were severally submitted.

The case of the "Enterprise" was assigned for hearing on Wednesday, October the 18th instant. The claims of the "Prince of Wales," the "Amelia," the "Brookline," of James Young, and of William Patterson, the barque "John A. Robb," and the schooner "Fidelity," were severally disallowed.

The claim of the Hudson Bay Company for drawback was allowed.

October 12.—The Commissioners conferred together on the Slave cases, and delivered opinions on several of the claims which had been submitted to them.

October 13.—The Commissioners met at the office to-day, according to appointment with the umpire and the agents, to discuss some questions of evidence as to which they entertain doubts.

October 14.—The Commissioners conferred together on the cases of the "Confidence" and "Evelina," Mr. Hornby being of opinion that the evidence in the former case showed that The United States' vessel "The Constitution," was running before the wind, with stern sails set, on a dark night, at the rate of 9 knots an hour; while that in the latter, irrespective of there being no papers in it, disclosed a mere sea risk. Mr. Hornby proposed that the Commissioners should take the opinion of some naval men in the case of the "Confidence," which Mr. Upham declined to do.

October 16.—The umpire attended to-day to confer with the Commissioners on the case of the Messrs. Rogers and the "John."

October 18.—The Commissioners attended at the office to-day for the purpose of going through the evidence which had been submitted in the case of the "Lawrence." Colonel Aspinwall and Mr. Hannen attended to furnish such explanation as might be required.

October 19.—In the claims of the brig "Enterprise" and "Creole," and the schooner "Hermosa," hearing was commenced before the umpire.

October 21.—Hearing was continued in the "Enterprise," "Hermosa," and "Creole," and the cases were submitted.

The claim of Messrs. King and Gracey, Mr. Barry, agent for the claimants, was assigned for hearing on the 25th of October instant; of Mr. Kenworthy on the 1st, and Messrs. Dawson and others on the 2nd of November next.

October 23.—In the claims of the "Jubilee," for salvage, of the "Robert," the "Elvira," and the "Olive Branch," the

Commissioners decided the evidence to be incomplete, and they were accordingly dismissed.

The claims of the "Crosthwaite," of the Ship Owners' Society, in the case of the "Ann," the "Duckenfield," the "Science," the "Prosperity," and of the Anglo-Mexican Mint Company, were, for the same reason, also dismissed.

October 24.—The Commissioners met to confer on several of the claims. Mr. Bates, the umpire, attended.

October 25.—Hearing was had as to the claims of Messrs. Barry and others for return of duties on woollen goods levied contrary to the provisions of the Treaty of Commerce of 1815.

Mr. Hannen, by leave, presented, for the use of the umpire, the opinion of Dr. Phillimore in the claim of Charles Uhde, as applicable to the question raised in the case of the Messrs. Laurent.

General Thomas was to reply in writing to the same.

October 26.—The Commissioners met to confer on several of the cases submitted.

October 27.—The Commissioners met to deliver their opinions in several of the cases. The agents attended, after which the Commissioners held a long conference with the umpire.

October 28.—The Commissioners delivered their opinions relative to the "Frances and Eliza," "Baron Renfrew," "Tigris and Seamew," the "Lady Shaw Stewart," and the "Albion," and these cases were severally referred to the umpire for decision.

The claim of the barque "Pearl" was disallowed.

The Commissioners, having disagreed upon the claim of the "Beaver," it was referred to the umpire for decision.

October 30.—The Commissioners met to investigate the evidence submitted in several of the cases.

October 31.—The Commissioners attended according to appointment with the agents to go through the evidence in several of the cases.

November 1.—The case of Platt and Duncan was, on leave, reopened, and General Thomas proposed to present certain affidavits, but objection being made to the introduction of further testimony, and it being suggested that the case would probably turn on the question of jurisdiction, the affidavits were withdrawn.

Some remarks were made by Messrs. Spinks and Thomas on the question of jurisdiction, and the effect of the Treaty of Commerce as bearing on that question, when the case was submitted.

In the case of Charles Kenworthy, Mr. Willis, special agent and counsel of the claimant, was heard, and the claim was submitted for decision, and, in case of disagreement, to that of the umpire, who was present.

November 4.—In the claim of James Shaw, the umpire being present, Mr. Willis, special agent and counsel for the claimant, was heard, and the case was submitted.

The case of the "Lawrence," the "John," and of Messrs. Rogers, were referred to the umpire as to the amount of damages to be awarded.

November 11.—Hearing was had before the Commissioners and umpire by Honourable Reverdy Johnson and General Thomas in the case of Philip Dawson and others, holders of bonds issued by the Republic of Texas, and the case was submitted.

November 13.—In the claim of the "Lady Shaw Stewart," the umpire being present, Mr. Hillyard made a statement relative to the amount of damages claimed, and the case was submitted for decision.

In the case of the "Only Son," hearing was had in pre-

sence of the umpire, when the Commissioners disagreed upon the allowance of the same.

The claim of Messrs. Platt and Duncan was disallowed.

The claim of Charles Kenworthy was disallowed.

The claim of James Shaw was disallowed.

The Commissioners being unable to agree in the case of the Florida Bondholders, that claim was referred to the umpire for decision; as was also that of Messrs. Kerford and Jenkin.

November 15.—In the case of Messrs. Kerford and Jenkin, Mr. Hannen and General Thomas were respectively heard, the umpire being present, and the claim was submitted for his decision.

November 16.—Hearing was had before the umpire in the claim of the brig "Lawrence," which was submitted.

Appointments were made for hearing in the case of the "James Mitchell," on Monday, and for the claim of Messrs. Cotesworth, Powell, and Pryor, and the brig "Confidence" on the same day.

November 18.—The umpire being present, Mr. Hannen was heard upon the case of the steamer "Beaver," and General Thomas in reply.

General Thomas placed on file a letter in the claim of the "Only Son."

In the Florida Bond case, an appointment was made for hearing on Tuesday week at twelve o'clock.

November 20.—Hearing was had before the umpire in the case of the brigantine "Confidence," by Dr. Adams, Queen's Counsel, and by General Thomas.

In the case of the assignees of the "James Mitchell," hearing was had before the Commissioners and umpire, by Messrs. Hannen and Thomas, and both cases were submitted for decision.

Hearing was also had before them in the case of Messrs. Cotesworth, Powell, and Pryor, as to the recovery of certain

lands granted in Texas, which was also submitted for decision.

November 22.—The Commissioners conferred on the case of the "James Mitchell," and agreed to dismiss the claim of Messrs. Cotesworth and Powell.

November 25.—The Commissioners disallowed the claims of the brig "Cyrus," the "Hero," the schooner "Leven Lank," and the claim of Messrs. Cotesworth, Powell, and Pryor.

They also agreed on an award in the case of the brig "Douglas."

The claims of the "Lord Nelson," the "Volusia," and the brig "Lawrence," were severally disagreed upon, and appointments were then made for hearing the same before the umpire.

November 27.—In the claim of the brigantine "Volusia," John Graham, owner, hearing was had by the Agents of the two Governments, and the same was submitted for the decision of the umpire.

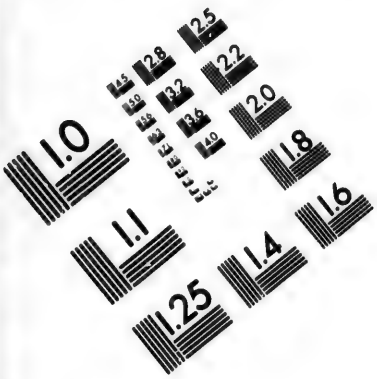
November 29.—The umpire reported to the Commissioners his opinion upon a portion of the claims referred to him for decision.

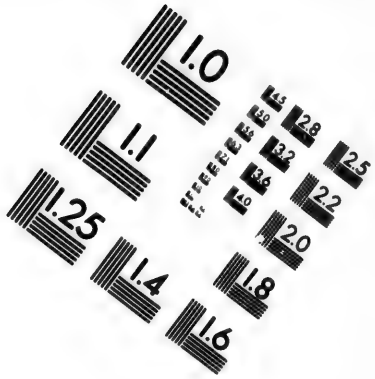
The claim of the executors of James Holford for the payment of bonds issued by the Republic of Texas, the umpire decided to be without the jurisdiction of the Commissioners.

The claim of Philip Dawson for the payment of bonds similarly issued was also decided to be without their jurisdiction.

In the claim of the barque "Jones," and for sundry ventures thereon, the umpire awarded the sum of one hundred thousand, six hundred and twenty-five dollars, due the 15th of January, 1855.

In the claim of the schooner "John," the umpire awarded to the owners, or their legal representatives, the sum of thirteen thousand, six hundred and eight dollars, due the 15th of January, 1855.





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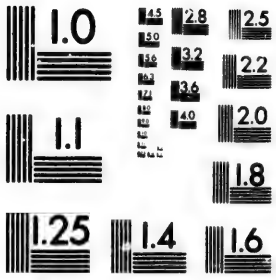

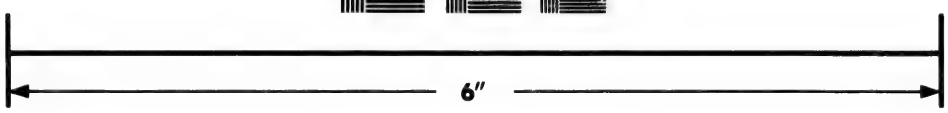

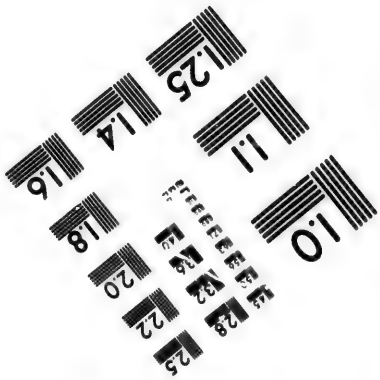

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In the claim of the ship "Lady Shaw Stewart," the umpire awarded the sum of six thousand dollars, due the 15th of January, 1855.

In the claim of the "Frances and Eliza," the umpire awarded the sum of thirty-four thousand, two hundred and twenty-seven dollars, due the 15th of January, 1855.

In the claim of the Hudson Bay Company's steamer "Beaver," the umpire awarded the sum of one thousand dollars, all of which awards are in full of said claims, and due to the claimants from the respective Governments on the 15th of January, 1855.

November 30.—The Commissioners met pursuant to appointment with the umpire and agents, and had long conferences on the claims submitted to the latter for his judgment.

December 1.—In the claim of the Hudson Bay Company for drawback, the sum of fifteen hundred and twenty-three dollars and sixty-eight cents was awarded by the Commissioners.

In the claim of the Hudson Bay Company for supplies furnished Volunteers of the Settlers against the Indians, the Commissioners awarded the sum of three thousand one hundred and eighty-two dollars, and twenty-two cents in full of said claim, to the 15th of January, 1855.

In the claim of the "Albion," the umpire awarded the sum of twenty thousand dollars, due the 15th of January, 1855.

The claim of the "Volusia" was disallowed by the umpire.

In the claim of the ship "James Mitchell," the umpire awarded the sum of twenty thousand dollars, due the 15th of January, 1855.

The Commissioners disagreed in the case of McCalmont and Greaves, on that of Calmont and Co., and on the amount to be awarded in the claim of the Great Western Steamship Company.

Appointments for hearing were made for those of

McCalmont and Greaves, and Calmont and Co., on Thursday at 12 M.

December 7.—In the claim of Messrs. McCalmont and Greaves for return of duties levied on goods imported into Vera Cruz during the Mexican war, hearing was had before the umpire.

Also in the claim of Messrs. Calmont and Co. for return of duties levied on goods taken possession of by Mexicans while under a convoy of United States' forces, and both cases were submitted to the umpire for his decision.

In the claim of Messrs. Rogers and Brothers, the umpire awarded the sum of seven thousand six hundred and seventy-six dollars, ninety-six cents, due the 15th of January, 1855.

December 9.—In the claim of Miller and Mackintosh hearing was had before the Commissioners and umpire. Hearing was also had before the umpire in the claim of the "Lord Nelson," and both cases were submitted for decision.

The case of the Great Western Steamship Company was argued by the agents and submitted for the decision of the umpire.

The claim of the "Sir Robert Peel" was submitted to the Commissioners on the papers.

December 11.—In the claim of Alexander McLeod for his arrest and imprisonment in New York on charge of being engaged in the destruction of the steamer "Caroline," hearing was had in the presence of the umpire. Mr. McLeod was also personally heard relative to his claim, when the same was submitted to the Commissioners for decision, and, in case of their disagreement, to the umpire.

In the claim of Charles Barry, on behalf of American importers of woollens, discussion was had as to the evidence requisite to establish proof of such ownership.

December 13.—In the claim of Mr. Barry for return of duties improperly levied, farther discussion was had as to the evidence necessary to prove the ownership of the parties for whom duties were paid, and a form of evidence to be obtained was drawn up for this purpose.

December 14.—In the claim of the schooner "Only Son," the umpire awarded the sum of one thousand dollars, due the 15th of January, 1855.

The claim of the schooner "Lord Nelson" the umpire decided to be not within the jurisdiction of the Commissioners.

In the claim of the "Tigris and Seamew" the umpire awarded the sum of twenty-four thousand and six dollars and forty cents, due the 15th of January, 1855.

In the claim of the Great Western Steam Ship Company the umpire awarded the sum of thirteen thousand five hundred dollars, due the 15th of January, 1855.

In the claim of Miller and Mackintosh the Commissioners awarded the sum of six thousand dollars, due the 15th of January, 1855.

The case of the Florida Bondholders was disallowed by the umpire.

The Commissioners gave instructions to Messrs. Quilter and Ball to complete and verify certain calculations in the claim preferred by the firm of Messrs. Godfrey, Pattison, and Co., of Glasgow.

December 20.—The claim of the Messrs. Laurent was disallowed by the umpire, as not being within the jurisdiction of the Commissioners.

December 23.—In the claim of the fishing schooner "Argus," the umpire awarded the sum of two thousand dollars, due the 15th of January, 1855.

In the claim of the schooner "Washington" the umpire awarded the sum of three thousand dollars, in full of said claim to the 15th of January, 1855.

In the claim of the brig "Enterprise" the umpire awarded to the Augusta Insurance Banking Company the sum of sixteen thousand dollars, and to the Charlestown Marine Insurance Company the sum of thirty-three thousand dollars, in full of their respective claims to the 15th of January, 1855.

In the claim of the "Baron Renfrew" the umpire awarded

the sum of six thousand dollars, in full of said claim to the 15th of January, 1855.

December 26.—The claim of Messrs. Calmont and Co. for return of duties paid on goods captured by the Mexicans was disallowed by the umpire.

December 27.—The papers constituting the claim of Andrew Mitchell were sent to Messrs. Quilter and Ball with instructions from Commissioners to complete and verify the same.

December 30.—Hearing was assigned in the cases of Charles Barry for Wednesday next, at one o'clock.

Sundry cases relative to the payment of Customs' Duties at New York were assigned for hearing on Thursday next, at one o'clock.

1855.

January 2.—The Commissioners disallowed the claim of the "Sir Robert Peel."

In the claim of George Houghton, the Commissioners awarded the sum of two thousand five hundred dollars.

The Commissioners disagreed on the allowance of the claim of Alexander McLeod, and that case was referred to the umpire.

January 6.—In the claim of the executors of John Taylor, hearing was had by Mr. Butt, Queen's Counsel, and General Thomas, as also in the claim of Samuel Bradbury, both of which were submitted for decision.

In the claim of Andrew Mitchell, agent for R. G. Finley Brothers and others, the Commissioners awarded the sum of twenty thousand six hundred and two dollars and sixty-five cents. Appointment was made for hearing in the claim of Charles Uhde for 12 o'clock on Monday; for the claim of William Broadbent at 12 on Tuesday; and for that of Messrs. Shaw, at 2 o'clock the same day.

January 8.—Hearing was had by the agents before the

Commissioners and umpire in the claim of Charles Uhde, for the alleged confiscation of merchandize at Matamoras, during the Mexican war, and the case was submitted for decision.

The claim of the "Evelina" was disallowed.

In the claim of McCalmont and Greaves, the umpire awarded the sum of eleven thousand seven hundred and thirty-three dollars and fifty-eight cents, in full of the same, to the 15th of January, 1855.

January 9.—In the claim of the brig "Creole," the umpire awarded the sum of one hundred and ten thousand three hundred and thirty dollars, in full of the same, to the 15th of January, 1855.

January 10.—In the claim of William Broadbent, hearing was had, and the same submitted for decision.

Hearing was also had in the claim of Messrs. George and Samuel Shaw, which was submitted.

The claim of Messrs. Kerford and Jenkin was disallowed by the umpire.

January 11.—In the claim of the schooner "Hermosa," the umpire awarded to the Louisiana State Marine and Fire Insurance Company, the sum of eight thousand dollars, and to the New Orleans Insurance Company eight thousand dollars, in full of their respective claims to the 15th of January, 1855.

January 12.—Hearing was had by Mr. Butt, Queen's Counsel, on the claim of William Bottomley's executors, for the return of moneys alleged to have been illegally exacted from him by the Collector of Customs at New York, and it was submitted for decision.

January 13.—The claims of the fishing schooners "Pallas," and the "Director," were disallowed by the umpire for want of evidence.

The claim of the schooner "Washington," seized in 1818, and condemned at Halifax, in Nova Scotia, for violation

of the Hovering Act, &c., was disallowed by the Commissioners; the evidence in said case being incomplete.

The claim of the brig "Lawrence" was disallowed

In the claim of Messrs. Godfrey, Pattison, and Co., the Commissioners awarded the sum of sixty-one thousand six hundred and eighty-nine dollars and fifty-four cents, in full of the same, due the 15th of January, 1855.

In the claim of the brigantine "Confidence," the umpire awarded the sum of nine thousand nine hundred and forty-six dollars and twenty cents, in full of the same to 15th January, 1855.

The claims of Samuel Bradbury, of John Taylor, of George and Samuel Shaw, of William Bottomley, and of William Broadbent, were severally disallowed.

In the claim of J. P. Oldfield and Co., the Commissioners awarded the sum of three thousand and ninety-nine dollars and fifty-four cents, in full of the claim of said Company, to 15th January, 1855.

In the claims of Charles Wirgman, agent for T. Wiggin and others, the Commissioners awarded the sum of thirty thousand four hundred and seventy-three dollars and forty-eight cents, in full of said claims respectively, to the 15th of January, 1855.

The Commissioners affixed their names to The United States' Docket of Claims, and also to the British Docket of Claims, as applicable to the several decisions and awards made in each docket respectively.

They also drew up and signed a General Order at the close of said docket, by which all awards were to take effect from this day, and are made payable to the claimants, their attorneys, legal representatives, or assigns.

January 15.—The Commissioners met to-day with the umpire, for the consideration of claims remaining undisposed of.

The umpire announced his opinion in the cases of Charles Uhde and Alexander McLeod. Directions were given for the collection of all accounts of expenditures incurred during

the sittings of the Commission, and for the completion of the records and proceedings in full to this date.

The Report of the Commissioners to their respective Governments was then drawn up and signed, and the business of the Commission terminated.

CLAIMS OF BRITISH SUBJECTS UPON THE GOVERNMENT OF THE UNITED STATES.

1. William McGlinchy.

Presented December 3, 1853—Heard April 5, 1854, and submitted—Claim dismissed.

For the seizure and detention of papers and personal property, not subject to duties, by United States' Revenue Officers on the River St. John, in the year 1845.

April 5.—Evidence having been submitted of the return and acceptance of the articles seized, the claim was dismissed.

Claim dismissed.

2. Thomas Rider.

Presented January 27, 1854—Heard February 27, and submitted—Award.

For losses sustained in consequence of an arrest, and detention in custody by the military authorities of Matamoras during a period of five and one-half months in the year 1846.

The Commissioners awarded the sum of six hundred and twenty-five dollars in full of the said claim.

3. The Joseph Albino, *William Allen, owner.*

Presented December 6, 1853—Heard, and submitted—Disallowed.

For seizure and detention at San Francisco, on charge of violating the Revenue Laws of The United States respecting foreign vessels.

Claim disallowed.

THE FRANCES AND ELIZA, *Christopher Richardson, owner.*

Presented December 30, 1853—Heard March 6 and 15, and submitted—Re-opened for the admission of further testimony, and again submitted May 13, 1854.—Disagreement of Commissioners on the amount of damage—submitted to the umpire—Award of umpire.

For the seizure of this vessel at New Orleans in 1819, and sale under a judgment of The United States' District Court, which was subsequently reversed by the decision of the Supreme Court of The United States.

October 28.—The Commissioners disagreed on the amount of damage to be awarded, and the case was referred to the umpire, and was submitted by the agents to his decision on the papers.

November 29.—The umpire awarded the sum of thirty-four thousand two hundred and twenty-seven dollars in full, of the said claim, due the 15th of January, 1855.

5. SHIP ALBION, *John Lidgett, owner.*

Presented January 20, 1854—Heard April 3 and May 13, and submitted—Disagreement of the Commissioners—Award of umpire.

For seizure of the above vessel by The United States' Officers of Revenue, for non-payment of Customs' duties; for cutting timber in Oregon; and for trading with the natives in violation of Acts of Congress.

October 28.—The Commissioners disagreed on the allowance of the claim, and it was referred to the umpire.

December 1.—The umpire awarded the sum of twenty thousand dollars in full of said claim, due the 15th of January, 1855.

6. MESSRS. LOBACK AND CO.

Presented December 6, 1853—Submitted—Disallowed.

For the seizure of logwood at Tabasco, by American seamen during the Mexican war.

Claim disallowed.

7. HUDSON BAY COMPANY.

Presented March 13, 1854—Withdrawn.

For exemption from taxes on live stock in Oregon, and repayment of duties collected thereon.

July 29.—Claim withdrawn.

8. Hudson Bay Company.

Presented March 13, 1854—Heard July 29, and submitted—Disagreement of the Commissioners—Heard before the umpire November 18—Award of umpire.

For seizure of the steamer "Beaver" in December, 1851, in Oregon, on charge of having violated The United States' Revenue Laws.

October 28.—The Commissioners disagreed on the allowance of the claim, and it was referred to the umpire.

November 29.—The umpire awarded the sum of one thousand dollars in full of the said claim, due the 15th of January, 1855.

9. Hudson Bay Company.

Presented March 13, 1854—Withdrawn.

For loss occasioned by the seizure of their schooner "Cadboro'."

July 29.—Claim withdrawn.

10. Hudson Bay Company.

Presented March 13, 1854—Heard July 29, and submitted—Disallowed.

For obstruction by United States' Revenue Officers of rights of transportation by their vessel the "Prince of Wales," under the Treaty of 1846.

October 11.—Claim disallowed.

11. Maurice Evans and Co.

Presented March 13, 1854—Heard July 1, and submitted.

For return of duties assessed by United States' Revenue Officers, in over valuation of wines and porter imported into New York City during the years 1850 and 1851.

Claim disallowed.

12. Joseph Wilson.

Presented March 13, 1854—Heard April 8, and submitted—Further affidavits filed July 12.

For his arrest and detention in Michigan, on charge of exercising his authority as British Land Officer on an island alleged to be within the limits of that State, afterwards found to be within British jurisdiction.

Claim disallowed.

13. Platt and Duncan.

Presented March 15, 1854—Heard July 1, and submitted—Reopened November 1, and again submitted.

For return of moneys alleged to be illegally obtained as an adjustment of suits brought against them by The United States' Collector at New York City in 1840, on a charge of having entered goods with false invoices.

November 13.—Claim disallowed.

14. The Executors of James Holford *and other claimants.*

Presented March 15, 1854—Protest filed as to the jurisdiction of Commissioners July 18—Heard July 18—Disagreement as to jurisdiction, heard before the umpire July 18.

For money due on bonds issued by Texas, prior to its admission into the Union for the payment of which bonds the Texan duties were pledged, and were afterwards transferred to The United States.

The Commissioners disagreed on the question of jurisdiction of said case, and it was referred to the umpire.

November 29. Claim disallowed by the umpire.

15. Philip Dawson *and others.*

Presented June 7, 1854—Protest filed against the jurisdiction of the Commissioners July 28—Heard on above July 28, and submitted—Disagreement as to jurisdiction—Heard before the umpire November 11—Disallowed by the umpire.

For money due on bonds, issued by Texas, prior to its admission into The United States.

The Commissioners disagreed on the question of jurisdiction, and the case was referred to the umpire.

November 29.—Claim disallowed by the umpire.

16. The Lord Nelson, *James Crooks, owner.*

Presented March 6, 1854—Heard March 23, on question of jurisdiction—Further argument submitted by leave, May 23, 1854—Disagreement as to jurisdiction—Heard before the umpire December 9—Disallowed by the umpire.

For proceeds of a judgment in the Court of Admiralty in 1818, which proceeds were not received on account of the clerk of the court proving a defaulter, said judgment being

founded on a suit for seizure of a vessel made prior to 1812.

The Commissioners disagreed on the question of jurisdiction of the case, and it was referred to the umpire.

December 14.—Claim disallowed by the umpire.

17. Alfred T. Wood.

Presented March 15, 1854—Heard April 8, and submitted—Disallowed.

For seizure in New Brunswick, and removal to Maine, for offences said to have been committed in that State.

Claim disallowed.

18. Samuel C. Johnston.

Presented March 13, 1854—Heard April 11, and submitted—Disallowed.

For arrest and prosecution at New York, on charge of violating Emigrant Passenger Act.

Claim disallowed.

19. The Union, *Robert Holl, owner.*

Presented March 13, 1854—Heard April 11, and submitted—Disallowed.

For additional payment of damage on account of the capture of this vessel by The United States' sloop-of-war "Peacock," after Peace had taken effect where the capture was made.

Claim disallowed.

20. Great Western Steamship Company.

Presented March 13, 1854—Heard July 5, and submitted—Disagreement of Commissioners on the amount of damage—Heard before the umpire December 9—Award of umpire.

For return of duties on coal entered and stored at Boston, and consumed on outward-bound voyages of their steamers, for which they claim that they are entitled to drawback.

December 1.—The Commissioners disagreed as to the amount to be allowed, and the same was referred to the umpire.

December 14.—The umpire awarded the sum of thirteen thousand five hundred dollars, due the 15th of January, 1855.

21. Heneage W. Dering *and others.*

Presented March 13, 1854—March 21 and May 26—Heard June 21, and submitted—Disagreement as to jurisdiction—Heard before the umpire—Disallowed by the umpire.

For sums due on bonds issued by the Territorial Government of Florida.

November 13.—The Commissioners disagreed on the question of jurisdiction, and also on the merits of the case, and it was referred to the umpire.

December 14.—Claim disallowed by the umpire.

22. The James Mitchell, *Francis Ashley and others, owners.*

Presented March 13, 1854—Heard before the Commissioners and umpire November 20, and submitted—Disagreement of Commissioners on the amount of damage—Award of umpire.

Claim for damage in removal of the above vessel to Key West, in Florida, for trial as to salvage, and sale there of vessel and cargo.

The Commissioners disagreed as to the amount of damage to be allowed, and the same was referred to the umpire.

December 1.—The umpire awarded the sum of twenty thousand dollars, due the 15th of January, 1855.

23. The Young Dixon, *Samuel Moats, owner.*

Presented March 13, 1854—Submitted on the papers October 18—Disallowed.

For excess charged on tonnage duties of the above vessel, by Custom-house Officers at Philadelphia, on her arrival from Honduras.

Claim disallowed.

24. Francis Watson, *and others.*

Presented January 7, 1854—Heard May 26, and submitted—Disallowed.

For lands granted them in the territory of New Brunswick, but by adjustment and location of boundary line now included in the State of Maine.

Claim disallowed.

25. THE IRENE, *Riddell Robson, owner.*

Presented March 13, 1854.

For the seizure and detention of this vessel for violation of the Emigrant Passenger Act.

October 18.—Dismissed.

26. MILLER AND MACKINTOSH.

Presented March 13, 1854—Heard December 9, and submitted—Award.

For damage from seizure of wines at San Francisco, in 1849, by The United States' Revenue Officers.

December 14.—The Commissioners awarded the sum of six thousand dollars in full of said claim, due the 15th of January, 1855.

27. BRIG LADY SHAW STEWART, *George Buckham, owner.*

Presented January 3, 1854—Heard May 13 and 15, and submitted—Disagreement of commissioners on the amount of damage—Case submitted to the umpire on the papers—Award of umpire.

For the alleged illegal seizure and sale of the above vessel at San Francisco by The United States' authorities.

October 28.—The Commissioners disagreed on the amount of damage to be awarded; and the claim was referred to the umpire, and was submitted by the agents to his decision on the papers.

November 29.—The umpire awarded the sum of six thousand dollars in full of said claim, due the 15th of January, 1855.

28. GODFREY, PATTISON AND CO.

Presented March 13, 1854—Further memorial presented by leave June 15, 1854—Heard June 29, and submitted—Award.

For the repayment of duties levied on their goods beyond those paid by citizens of other nations, contrary to the Treaty of 1815.

January 13, 1855.—The Commissioners award the sum of sixty-one thousand six hundred and eighty-nine dollars and fifty-four cents, in full of said claim to January 15th, 1855.

29. Messrs. Baker and Co.

Presented March 13, 1854—Dismissed.

For expulsion from Tampico by the forces of The United States.

Claim dismissed.

30. Messrs. McCalmont and Greaves.

Presented December 30, 1853—Heard April 22 and 25, 1854, and submitted—Disagreement of the Commissioners—Heard before umpire December 7—Award of umpire.

For return of duties levied at Vera Cruz during the Mexican war, through change and alleged mistake in the American tariff.

December 1.—The Commissioners disagreed on the allowance of the claim, and it was referred to the umpire.

January 8.—The umpire awarded the sum of eleven thousand seven hundred and thirty-three dollars and fifty-eight cents, due the 15th of January, 1855.

31. Messrs. Calmont and Co.

Presented December 7, 1853—Heard, and submitted—Disallowed—Further claim for return of duties paid on the above—Presented December 7, 1853—Heard May 18, 1854—Disagreement of the Commissioners—Heard before umpire December 7, 1854—Disallowed by the umpire.

For the seizure of goods belonging to them by the Mexicans while under convoy of The United States' forces.

December 7.—Claim for seizure disallowed.

A further claim was then made for return of duties paid on the above goods.

December 1.—The Commissioners disagreed on the allowance of the same, and it was referred to the umpire.

December 26.—Claim for return of duties disallowed by the umpire.

32. Messrs. Cotesworth, Powell, and Pryor.

Presented March 13, 1854—Heard before the Commissioners and umpire November 20—Disallowed.

For lands granted them in Texas while under the Government of Mexico.

November 25 —Claim disallowed.

33. Messrs. T. and B. Laurent.

Presented January 16, 1854—Question of jurisdiction raised April 5, heard and submitted—Disagreement of the Commissioners—Heard before the umpire October 5—Disallowed by the umpire.

For the seizure and confiscation by General Scott, of a debt alleged to be due from the Messrs. Laurent to the Mexican Government on a contract for the purchase of real estate, which contract was denied by the Government, and of which estate the Messrs. Laurent were dispossessed by judgment of the Mexican courts.

September 26.—The Commissioners being unable to agree, severally delivered their opinions, which were placed on file, and the case was committed to the decision of the umpire.

December 20.—Claim disallowed by the umpire.

34. Brigantine Confidence.

Presented February 17, 1854—Heard June 10, and submitted—Further papers filed by leave, June 19 and October 6—Award of umpire.

Claim for the running down the above vessel by The United States' frigate "Constitution," in the Straits of Gibraltar, December 1st, 1850.

January 13.—The umpire awarded the sum of two thousand and fifty-five pounds, or nine thousand nine hundred and forty-six dollars and twenty cents, in full of said claim, due the 15th of January, 1855.

35. Samuel Bradbury.

Presented March 15, 1854—Heard January 6, 1855, and submitted—Disallowed.

For return of moneys alleged to be illegally obtained by the Collector of Customs of New York, in compromise of a suit brought on charge of having entered goods with false invoices.

January 13.—Claim disallowed.

36. Hudson Bay Company.

Presented March 13, 1854—Heard July 29, and submitted—Award.

For drawback of Duties on goods paid at Astoria in 1852, and re-exported to Fort Vancouver.

October 11.—The Commissioners award the sum of

fifteen hundred and twenty-three dollars and sixty-eight cents, in full of said claim, due the 15th of January, 1855.

37. Hudson Bay Company.

Presented March 13, 1854—Heard July 29, and submitted—Award.

For supplies furnished volunteers raised in Oregon, on breaking out of hostilities with the Indians, and expenditures incurred on rescue of captives from them prior to the organization of the Territorial Government.

December 1.—The Commissioners award the sum of three thousand one hundred and eighty-two dollars and twenty-one cents, in full of said claim, due the 15th of January, 1855.

38. George Houghton.

Presented March 13, 1854—Heard May 26, and submitted—Award.

For return of specie alleged to belong to the claimant, taken on board a pirate vessel captured by The United States.

January 2, 1855.—The Commissioners awarded the sum of two thousand five hundred dollars, in full of said claim, due the 15th of January, 1855.

39. The Baron Renfrew, *Duncan Gibb, owner.*

Presented March 6, 1854—Heard March 21, and submitted—Disagreement of Commissioners on the amount of damage—Award of umpire.

For seizure and detention of the above vessel at San Francisco.

October 28.—The Commissioners disagreed as to the amount of damage to be awarded, and the case was referred to the umpire, and was submitted by the agents to his decision on the papers.

December 23.—The umpire awarded the sum of six thousand dollars, in full of said claim, due the 15th of January, 1855.

40. Alexander McLeod.

Presented March 13, 1854—Statement made by Mr. McCleod by consent, September 27—Heard before the Commissioners and umpire December 11—Disagreement of Commissioners January 2—Disallowed by the umpire.

For damage occasioned by his arrest, detention, and trial

in New York, on charge of being concerned in the destruction of the steamer "Caroline."

January 2.—The Commissioners disagreed on the allowance of the claim, and it was referred to the umpire.

January 15.—Claim disallowed by the umpire.

41. Charles Uhde.

Presented June 14, 1854—Heard January 8, 1855—Disagreement of Commissioners—Award of umpire.

For the seizure and alleged confiscation of merchandize by The United States' forces in Matamoras, during the year 1846.

January 9, 1855.—The Commissioners disagreed on the allowance of the same, and it was referred to the umpire.

January 15.—The umpire awarded the sum of twenty-five thousand dollars, in full of said claim, due the 15th of January, 1855.

42. The Sir Robert Peel, *Jonas Jones, and others, owners.*

Presented March 13, 1854—Submitted on the papers for decision December 9—Disallowed.

For destruction of the above vessel in the River St. Lawrence, in 1838, by persons alleged to be citizens of The United States.

January 2.—Claim disallowed.

43. Messrs. Butterfield and Brothers.

Presented March 13, 1854—Heard July 8, and submitted—Dismissed.

For the repayment of duties levied on their goods beyond those paid by citizens of other nations, contrary to the Treaty of 1815.

No evidence submitted.

Dismissed.

44. J. P. Oldfield and Co.

Presented May 23, 1854—Heard July 8, and submitted—Award.

For the repayment of duties levied on their goods beyond those paid by citizens of other nations, contrary to the Treaty of 1815.

January 13, 1855.—The Commissioners award the sum of three thousand and ninety-nine dollars and fifty-four cents to Charles Turner, official assignee of J. P. Oldfield, of Manchester, in full of the claim of said company, to the 15th of January, 1855.

45. CHARLES KENWORTHY, *George H. Taylor, agent.*

Presented March 15, 1854—Heard November 1, and submitted—Disallowed.

For return of moneys alleged to be illegally obtained by the Collector of Customs of New York, on a charge of having entered goods with false invoices.

November 13.—Claim disallowed.

46. JAMES SHAW, *George H. Taylor, agent.*

Presented March 15, 1854—Heard November 4, and submitted—Disallowed.

For return of duties, as above in No. 45.

November 13.—Claim disallowed.

47. JOHN TAYLOR, JUNR., *by his executors, Francis Shaw, and others.*

Presented March 15, 1854—Heard Jan. 6, 1855, and submitted—Disallowed.

For return of moneys alleged to be illegally obtained by the Collector of Customs of New York, as a compromise of a suit brought on charge of having entered goods with false invoices.

January 13.—Claim disallowed.

48. MESSRS. KERFORD AND JENKIN *merchants in Yacatecas, Mexico.*

Presented December 1, 1853—Question of jurisdiction raised and heard April 5—Heard also on its merits June 24—Disagreement of the Commissioners—Heard before the umpire on its merits November 15—Disallowed by the umpire.

Claim for detention by The United States' forces of their caravan conveying goods to the interior of Mexico during the year 1846.

November 13.—The Commissioners disagreed on the allowance of the claim, and the case was referred to the umpire.

January 10.—Claim disallowed by the umpire.

49. Charles Green.

Presented March 13, 1854, and submitted on the papers—Disallowed.

For the seizure of certain hardware goods, at San Francisco, by United States' Revenue Officers.

October 10.—Claim disallowed.

50. William Patterson.

Presented February 23, 1854—Heard, and submitted—Disallowed.

For injuries alleged to have been received at Matamoras, from the forces of The United States.

October 11.—Claim disallowed.

51. John Potts.

Presented January 13, 1854—Disallowed.

For losses occasioned by the closing of his Mint, in Mexico, by the Forces of The United States.

Claim disallowed.

52. Messrs Glen and Co.

Presented March 13, 1854—Submitted on the papers—Dismissed.

For the seizure of wines, and other spirits, at San Francisco.

October 18.—Claim dismissed, as being in progress of settlement by the Secretary of The United States' Treasury.

53. P. B. Murphy.

Presented March 13, 1854—Withdrawn.

For return of duties on brandy levied at San Francisco.

Claim withdrawn, the duties having been refunded by the Collector.

54. Charles B. Hall.

Presented March 13, 1854—Withdrawn.

For the illegal seizure of goods, at Cincinnati, by United States' Custom-house Officers.

Claim withdrawn.

55. The Mary Anne.

Presented March 13, 1854—Disallowed.

For loss arising out of infringement of the Emigrant Passengers' Act.

Claim disallowed.

56. The Ship Herald.

Presented March 13, 1854—Submitted on the papers—Dismissed.

For injuries received at Marseilles by The United States' sloop-of-war Erie.

Claim dismissed.

57. Hon. W. Black.

Presented March 13—Submitted on the papers May 26—Disallowed.

For lands in the territory of New Brunswick included by location and adjustment of boundary line within the State of Maine.

Claim disallowed.

58. Lord Cartaret.

Presented January 9, 1854, and submitted on the papers—Disallowed.

Claim to lands granted his ancestors in North and South Carolina, of which he alleges himself to be entitled.

Claim disallowed.

59. Earl of Dartmouth.

Presented January 10, 1854, and submitted on the papers—Disallowed.

Claim for lands, formerly granted to him, situated in East Florida.

Claim disallowed.

60. The Representatives of Col. Elias Durnford.

Presented March 13, 1854—Heard May 26, and submitted on the papers—Disallowed.

Claim for lands formerly granted Colonel Elias Durnford in Florida.

Claim disallowed.

61. James H. Rogers.

Presented March 15, 1854, and submitted on the papers—Disallowed.

For the recovery of lands in Florida.

Claim disallowed.

62. Thomas Whyte.

Presented March 13, 1854—Heard May 26, and submitted—Disallowed.

For the recovery of lands in Florida.

Claim disallowed.

63. G. Rotchford Clarke.

Presented March 13, 1854—Heard May 5 and 6, on question of jurisdiction, and submitted—Disallowed.

For the recovery of lands in Vermont, or the value thereof, granted to his ancestors by the State of New York prior to the admission of Vermont into the Union, and which were claimed to be reserved to the Proprietors under provisions of Treaty between The United States and Great Britain.

Claim disallowed.

64. Barque Pearl, *James Tindoll, and others, owners.*

Presented March 13, 1854—Heard May 18, and submitted—Disallowed.

For the seizure and confiscation of the above vessel at San Francisco, for alleged breach of The United States' Navigation Laws.

October 28.—Claim disallowed.

65. Duties on Cotton Goods, *Charles Wirgman, agent.*

Claim for return of duties levied on cotton goods beyond those paid by other nations in contravention of the Treaty of Commerce of 1815.

January 13, 1855.—Claims in favour of the following persons were severally allowed by the Commissioners for the sums specified against their names, amounting in all to twenty-nine thousand seven hundred and sixty dollars and fourteen cents.

Names.	Residence.	Amounts.
Wotherspoon and Wolford	Liverpool	£1,510 60
John Twigg	do.	97 20
William A. Brown	do.	338 82
Andrew Taylor	do.	337 27
William Fielden & Co.	do.	158 95
Timothy Wiggin	London	2,816 94
George Wildes	do.	68 06
Charles Jackson	Leigh	292 51
Abraham Turner	Chorley	129 81
John Caldwell & Co.	Paiswell	44 50
Martin & Lee	Panhead	218 06
Patrick Mitchell	Glasgow	296 72
John Frame & Son	do.	1,016 39
John McPhail	do.	286 48
J. & R. Cogan	do.	250 86
Buchanan & Mitchell	do.	278 61
P. Hutchison & Co.	do.	326 59
William Snell	do.	177 00
S. Rollo & Co.	do.	147 39
John Black	do.	116 39
William Alston	do.	113 75
J. W. Alston	do.	107 25
J. McDougall	do.	112 66
Warden. Walker & Hill	do.	102 40
Patrick McGregor	do.	90 10
David Mackinlay	do.	95 00
John Todd & Co.	do.	100 93
Gilchrist, Risk & Co.	do.	76 72
John Dick	do.	53 85
Black & Stewart	do.	69 58
John Finlay	do.	58 83
Charles Kerr & Co.	do.	85 29
John McAlister & Co.	do.	72 95
Ure & Monteith	do.	65 65
Duff & Stevenson	do.	47 13
Strine Printing Company	Manchester	605 79
Fielden, Brother, & John Crossley	do.	309 34
John Kelsal	do.	269 21
T. Longshaw	do.	225 39
John Ingham & Co.	do.	234 60
John Knowles	do.	105 00
T. Cardwell & Co.	do.	297 70
J. & S. Bury	do.	207 35
William Lindsay	do.	200 73
R. Fort	do.	87 20
Hargreaves, Dugdale & Co.	do.	1,689 48
*Dean & Brothers (Bolton) near	do.	1,293 69
F. Fern & Brothers	do.	1,225 65
Harrison & Beaver	do.	1,262 18
J. & T. Ramsbotham	do.	500 00
J. & G. Jones	do.	1,253 34

* Jane Dean, executrix of J. Dean (Bolton).

Names.	Residence.	Amounts.
*James Woods Weston, executor of Thomas Calvert, late of	Manchester	1,329 51
*John Clegg, executor of William Turner, late of	do.	3,640 87
John Knight & Co.	do.	948 54
J. & J. Ashton	do.	788 45
R. Bleasby	do.	405 51
F. Dixon	do.	378 02
John A. Hobson	do.	373 18
F. Slatter	do.	339 17
*George Faulkner, executor of John Owens, late of	do.	325 07
T. Burgess	do.	203 82
William Gray	do.	475 41
Sykes & Yates	London	638 95
		$30,260 14

DUTIES ON COTTON GOODS, *Charles Wirgman, agent.*

Claim for return of duties, as above, by John A. Hobson and Andrew Taylor.

January 13.—The Commissioners award to John A. Hobson the sum of forty-two dollars fifty-eight cents., and to Andrew Taylor the sum of one hundred and seventy dollars, and seventy-six cents., in full of said claims respectively, to January 15th, 1855.

66. CLAIM FOR RETURN OF DUTIES LEVIED ON COTTON GOODS AS ABOVE IN No. 65, *Andrew Mitchell, agent.*

January 6, 1855.—Claims in favour of the following persons were severally allowed by the Commissioners for the sums specified against their names, amounting in all to twenty thousand six hundred and two dollars and sixty-five cents.

* In these three cases the probates of the wills of the parties named in this list (being the surviving partners of the firms to which the amounts were found to be due), have been duly examined by the Commissioners, and found to be in due form, and properly executed, attested, &c.

Names.	Residence.	Amounts.
Robert Gourlay & Co.	Glasgow	$501 52
R. G. Finlay & Brothers	do.	2,395 01
John Alston & Son	do.	336 79
John Ker, jun.	do.	806 64
John Spencer & Son	Manchester	180 74
Fort, Brothers & Co.	do.	1,112 27
Late Patrick Mitchell	Glasgow	4,007 55
George Berrell	Dunfermline....	516 64
Mitchell & Ker, jun.	Glasgow	452 01
Fort, Brothers & Co., Manchester, and Ker, jun., and Alston & Son	do.	1,012 30
Berrell (Dunfermline) and Mitchell	do.	3,840 76
Berrell (Dunfermline) and Finlay & Brothers	do.	1,339 52
Spencer & Sons (Manchester) and Mitchell	do.	1,183 96
Berrell (Dunfermline) and Brown & Co., Mitchell, and Finlay & Brothers	do.	2,062 03
Mitchell, Finlay & Brothers	do.	914 91
		$20,602 65

67. George and Samuel Shaw.

Presented March 15, 1854—Heard January 6, 1855, and submitted—Disallowed.

For return of monies alleged to be illegally obtained by the Collector of Customs of New York, in compromise of a suit brought on charge of having entered goods with false invoices.

January 13.—Claim disallowed.

68. William Broadbent.

Presented March 15, 1854—Heard January 6, 1855, and submitted—Disallowed.

For return of moneys as above in No. 67.

January 13, 1855.—Claim disallowed by the umpire.

69. William Bottomley, *by his executors.*

Presented March 15, 1854—Heard January 12, 1855, and submitted—Disallowed.

Claim for return of moneys as above in No. 67.

January 13.—Claim disallowed.

70. The Crosthwaite, *Messrs. Stuart and Simpson, owners.*

Presented March 13, 1854—Dismissed.

For seizure of the above vessel at New Orleans.

Dismissed.

71. SHIP OWNERS' SOCIETY.

Presented March, 13, 1854—Dismissed.

For seizure of the "Ann," in 1819.

Dismissed.

72. THE DUCKENFIELD, *Messrs. David Lyons and Co., owners.*

Presented March 13, 1854—Dismissed.

For return of discriminating duties levied on the above vessel.

Dismissed.

73. THE SCIENCE, *Messrs. Wilson and McClellan, owners.*

Presented March 13, 1854—Dismissed.

For return of duties levied on the above vessel during the year 1846.

Dismissed.

74. THE PROSPERITY, *Messrs. Musgrave, owners.*

Presented March 13, 1854—Dismissed.

For excess of duties imposed on said vessel.

Dismissed.

75. ANGLO-MEXICAN MINT COMPANY.

Presented March 13, 1854—Dismissed.

For loss caused by order of The United States prohibiting the exportation of gold from Mexico.

Dismissed.

The foregoing docket contains a correct report of awards and judgments made on claims of British subjects against The United States' Government, after full hearing and examination thereof; and we hereby place our signatures to the same, to be applied thereto in the same manner, and as fully as if severally affixed to each of said awards and judgments.

The awards of moneys therein made are to be paid by The United States' Government to the British Government for the benefit of the several claimants, their attorneys, legal

representatives or assigns, and the said awards are to be regarded as bearing date from the 13th of January, 1855.

(Signed) EDMUND HORNBY,
British Commissioner.

N. G. UPHAM,
United States' Commissioner.

CLAIMS OF AMERICAN CITIZENS UPON THE GOVERNMENT OF HER BRITANNIC MAJESTY.

1. N. L. Rogers & Brothers.

Presented October 21, 1853—Heard November 28—Further affidavits filed February 23, 1854—Further heard February 27, and submitted—Disagreement of Commissioners on the amount of damage—See Mr. Hornby's printed opinion—Award of umpire.

For the return of Customs duties assessed in the Bay of Islands, in New Zealand, during the years 1840 and 1841.

November 4.—The Commissioners disagreed as to the amount of damage to be awarded, and the case was referred to the umpire, and was submitted by the agents to his decision on the papers.

December 7.—The umpire awarded the sum of seven thousand six hundred and seventy-six dollars and ninety-six cents, due the 15th of January, 1855.

2. Schooner Fidelity, *Thomas Tyson, owner.*

Presented January 24, 1854—Heard March 23, and submitted—Disallowed.

For seizure of the above vessel, at Sierra Leone, on a charge of smuggling.

October 11.—The vessel was discharged after a brief detention, and, it appearing to the Commissioners that there existed probable cause of seizure, the claim was disallowed.

3. Barque Jones, *P. J. Farnham & Co., owners.*

Presented October 31, 1853—Further papers presented November 28—Heard March 17 and 18, 1854—Further affidavits filed April 11 and May 15—Disagreement of Commissioners—Heard before umpire—Award of umpire.

For seizure, at St. Helena, on charge of being concerned

in the African Slave Trade, assessment of costs on the vessel, at Sierra Leone, and sale of vessel and cargo.

April 22.—The Commissioners, being unable to agree, severally delivered their opinions, which were placed on file, and the case was committed to the decision of the umpire.

November 29.—The umpire awarded to the owners of the "Jones," the sum of ninety-six thousand seven hundred and twenty dollars, and to sundry persons for ventures of goods therein, as follows, viz., to James Gilbert, the master, one thousand eight hundred and sixty-three dollars; to Ebenezer Symonds, the mate, eight hundred and forty-two dollars; to F. Sexton, the supercargo, one thousand two hundred dollars, amounting in all to the sum of one hundred thousand six hundred and twenty-five dollars.

4. Brig Cyrus, *Peter C. Dumas, owner.*

Presented March 14, 1854—Heard August 2, and submitted—Disallowed.

For seizure and detention of this vessel by the brig-of-war, "Alert," on charge of being concerned in the Slave Trade.

November 25.—Claim disallowed.

5. Schooner John, *Reuben Shapely, owner.*

Presented March 14, 1854—Heard May 10, and submitted—Disagreement of the Commissioners—Award of umpire.

For capture of the above vessel by the British ship-of-war "Talbot," March 5th, 1815, after the close of the war, when peace existed by the terms of the Treaty in the latitude where she was seized.

November 4.—The Commissioners disagreed on the amount of damage, and it was referred to the umpire.

November 29.—The umpire awarded the sum of thirteen thousand six hundred and eight dollars, and twenty-two cents in full of said claim, due the 15th of January, 1855.

6. Schooner Levin Lank, *James Sullivan, owner.*

Presented March 14, 1854—Heard August 16, and submitted—Disallowed.

This vessel was sold by her master and lessee to foreign owners on the coast of Africa. She was afterwards seized

and condemned, at St. Helena, for being concerned in the Slave Trade.

Claim was made here for her by her original owner.

November 25.—Disallowed.

7. BRIGANTINE VOLUSIA, *John W. Disney, and John Graham, owners.*

Presented March 14, 1854—Heard July 5, and submitted—Further papers filed by leave July 8—Disagreement of the Commissioners—Heard before umpire November 27—Disallowed by the umpire.

For seizure of the above in 1850, by the British steamer "Rattler," while on a voyage from Rio Janeiro, on charge of being concerned in the Slave Trade, and for her condemnation as having false papers.

November 25.—The Commissioners disagreed on the allowance of the claim, and it was referred to the umpire.

December 1.—Claim disallowed by the umpire.

8. THE ONLY SON, *Fuller and Delano, owners.*

Presented March 14, 1854—Heard before the Commissioners and umpire November 13, and submitted—Disagreement of the Commissioners—Award of umpire.

For compelling the above vessel to be entered at Halifax, and to pay duties in 1812, when she had put in there on her way to a market merely, whereby she was compelled to dispose of her cargo there at loss.

November 13.—The Commissioners disagreed on the allowance of the claim, and it was referred to the umpire.

December 14.—The umpire awarded the sum of one thousand dollars in full of said claim, due the 15th of January, 1855.

9. SHIP AMELIA, *Robert Roberts, owner.*

Presented June 1, 1854—Heard June 3, and submitted—Disallowed.

For capture of the above by a British cruiser, while on her way from Porto Rico to Guadaloupe, on the 11th of February, 1815, and for her subsequent condemnation.

October 11.—It appearing that the date of the capture of the above vessel was prior to the Ratification of the Treaty of Peace of December, 1814, the claim was disallowed.

10. JOHN MCCLURE *and others.*

Presented March 14, 1854—Heard on question of jurisdiction August 17, and submitted—Disallowed.

Claim for slaves alleged to be owned by citizens of The United States, in Florida, while that territory belonged to Spain, and which escaped from Florida to Cumberland Island, and were taken away by the British authorities, at the close of the war of 1815.

September 26.—Disallowed, on the ground of want of jurisdiction, also of an adjustment under a prior Convention for all slaves removed, holden under American laws.

11. JAMES YOUNG.

Presented by leave June 3, 1854, and heard and submitted—Disallowed.

Claim for slaves captured on the high seas, during the war of 1812, taken to the West Indies, and there disposed of by the British authorities.

October 11.—Claim disallowed.

12. BRIG CREOLE, *Edward Lockett and others, owners of slaves on board.*

Presented March 14, 1854—Further papers filed May 23—Heard June 3, and submitted—Further claim to property on board presented by leave June 10 and 14, 1354—Disagreement of the Commissioners—Heard before umpire October 19 and 21—Award of umpire.

Claim for liberating slaves on board said vessel at the Bahamas Islands, which had been compelled to put in there by the slaves who had mutinied, and obtained control of the vessel by killing one of the passengers, and severely wounding the captain, chief mate, and a portion of the crew.

September 26.—The Commissioners disagreed on the allowance of the claim, and it was referred to the umpire.

January 9.—The umpire awarded to the several claimants in this case hereafter mentioned, the sums set against their respective names, amounting in all to one hundred and ten thousand, three hundred and thirty dollars in full to the 15th of January, 1855, viz.:—

To Edward Lockett . . .	$22,250	
John Hogun	8,000	
William H. Goodwin, for self, and Thomas McCargo . . .	23,140	
John Pemberton, liquidator of the Merchants' Insurance Company of New Orleans . . .	12,460	first claim.
G. H. Apperson and Sherman Johnson	20,470	
P. Rotchford	2,136	
John Pemberton, liquidator of the Merchants' Insurance Company of New Orleans . . .	16,000	second claim.
James Andrews . . .	5,874	
	$110,330	

13. Barque John A. Robb.

Presented March 14, 1854—Heard July 15, and submitted—Disallowed.

For the removal of a sailor from this vessel by a British cruizer, on the coast of Africa.

October 11.—The right to enter the vessel for such purpose was disavowed, and it appearing on the evidence submitted, that the sailor, who had some controversy with his captain, left the vessel ultimately with the master's consent. The claim was disallowed.

14. Maria Dolores, *William Taggart and others owners.*

Presented March 14, 1854—Heard August 9 and September 25, and submitted —Disallowed, as not being within the jurisdiction of the Commissioners.

For proceeds of said vessel and cargo, captured by a Brazilian privateer, and brought into Jamaica, where the vessel and cargo were sold by the British Colonial authorities. The present claimant being a citizen of The United States.

Held not to be within the jurisdiction of the Commissioners.

15. Brig Douglas, *Amos Frazar, owner.*

Presented April 22, 1854—Further papers filed May 13—Heard July 21, and submitted—Award.

For seizure and detention of the above vessel, on charge of being engaged in the Slave Trade.

November 25.—The Commissioners awarded the sum of six hundred dollars in full of said claim due the 15th of January, 1855.

16. Schooner Caroline Knight, *George Knight and others owners.*

Presented February 9, 1854—Heard July 12, and submitted—Award.

For capture of the above vessel, and proceedings on the sale of the same at Prince Edward's Island, in 1852.

October 10.—The Commissioners awarded the sum of one thousand eight hundred and eighty-seven dollars and sixty cents, in full of said claim, due the 15th January, 1855.

17. The Vessels Tigris and Seamew, *Messrs. Brookhouse and Hunt, owners.*

Presented March 14, 1854—Submitted on the papers—Disagreement of Commissioners as to amount of damage—Award of umpire.

Damage for seizure of the above vessels in 1840, by the British Cruiser "Waterwitch," on the coast of Africa, and sending them to America for trial for violation of laws of The United States.

October 28.—The Commissioners disagreed on the amount of damage to be awarded, and the case was referred and submitted on the papers to the decision of the umpire.

December 14.—The umpire awarded twenty four thousand and six dollars and forty cents, in full of said claim due the 15th of January, 1855.

18. Schooner Pallas, *Edward Haskell and others, owners.*

Presented March 14, 1854—Heard July 15 and August 1, and submitted—Disagreement of the Commissioners—Disallowed by the umpire.

For illegal seizure of the same off Chittican Bay, and its detention during the fishing season.

October 28.—The Commissioners disagreed on the allowance of the claim, and it was referred to the umpire.

January 15.—Claim disallowed by the umpire for want of evidence.

19. Schooner Argus, *Doughty, master.*

Presented March 14, 1854—Heard July 15 and August 1, and submitted—Disagreement of Commissioners on construction of Fishery Treaty—Heard before umpire October 11, and submitted—Award of umpire.

For seizure of the above vessel on St. Ann's Bank by the British Revenue cruiser "Sylph," and her removal to Sydney, where she was subsequently sold.

September 26.—The Commissioners disagreed on the construction of the Treaty of 1818, as to fisheries applicable to this case, and the same was submitted to the umpire.

December 23.—The umpire awarded the sum of two thousand dollars in full of said claim, due the 15th of January, 1855.

20. The Julius and Edward, *Charles Tyng, owner.*

Presented March 14, 1854—Submitted on the papers—Dismissed.

Vessel seized by British cruiser and taken to Bremen.

No evidence submitted. Claim dismissed.

21. Schooner Hero, *James B. McConnel.*

Presented March 14, 1854—Submitted on the papers—Disallowed.

For seizure and detention of the above vessel by Her Majesty's brig "Lynx," off the coast of Africa.

November 25.—Claim disallowed.

22. Brig Charlotte, *Hart, Sands and others, owners.*

Presented March 14, 1854—Heard July 21, and submitted—Disallowed.

For seizure under legal process, by a British claimant, on the coast of Ireland, and her subsequent release by the Court of Admiralty, without costs for her detention.

Claim disallowed on the ground of its being a controversy between private individuals, settled by a competent court, within whose jurisdiction the property was.

23. Henry H. Schieffelin.

Presented by leave June 10—Heard August 17 and October 4, on question of jurisdiction, and submitted—Disallowed, on the ground of want of jurisdiction.

Case pending in Admiralty Court for seizure of a vessel prior to the war of 1812, on which restitution was ordered, but during the war the property was confiscated.

Claim is now made for damage in refusing to proceed with suit in court after peace.

Claim disallowed on the ground of want of jurisdiction.

24. Schooner Washington.

Presented March 14, 1854—Submitted on the papers—Disallowed.

For capture and condemnation of the above vessel at Halifax, by the British Authorities, in 1818.

January 13, 1855.—Evidence incomplete. Disallowed.

25. The Joseph Cowperthwait, *William J. Smith and others, owners.*

Presented March 14, 1854—Heard July 21, and submitted—Dismissed.

For search and detention of the above vessel by the Governor of Cape Coast Castle.

No evidence submitted. Dismissed.

26. Schooner Washington.

Presented March 14, 1854—Heard July 15 and August 1, and submitted—Disagreement of Commissioners as to construction of Fishery Treaty—Heard before umpire October 11—Award of umpire.

For the capture and condemnation of the above vessel at Halifax in 1843, by the Colonial authorities, for taking fish in the Bay of Fundy, when more than three miles from the shore.

September 26.—The Commissioners disagreed on the construction of the Treaty of 1818 as to fisheries applicable to this case, and the same was submitted to the umpire.

December 23.—The umpire awarded the sum of three

thousand dollars in full of said claim, due the 15th of January, 1855.

27. Schooner Director.

Presented March 14, 1854—Heard July 15 and August 1, and submitted—Disagreement of Commissioners as to construction of Fishery Treaty—Heard before umpire October 11—Disallowed by the umpire.

For capture of the above vessel in 1840, by the British armed vessel "John and Louisa Wallis."

September 26.—The Commissioners disagreed on the construction of the Treaty of 1818, as to fisheries applicable to this case, and the same was submitted to the umpire.

January 13.—Claim disallowed by the umpire for want of sufficient evidence.

28. George W. Atwood.

Presented March 14, 1854—Submitted on the papers—Disallowed.

The claimant chartered a British vessel to take passengers and freight from England to California. Controversies having arisen between him and the captain and passengers, Atwood appealed for aid to the British Minister at Rio. After various difficulties, the matters in controversy were there settled by arbitrators mutually appointed.

Claim disallowed.

29. William Cook *and others.*

Presented November 28, 1853—Exception taken as to jurisdiction of the Commissioners, December 15, 1853—Heard on same, June 14, 1854, and submitted.

Claim for the proceeds of the personal property and effects of Mrs. Francis Mary Shard, deceased, of whom the claimants allege themselves to be the legal heirs, and that the proceeds of her property has gone into the Treasury of Her Majesty's Government.

July 23.—The Commissioners in this case are of opinion that the claim is not included within the terms of the Convention, and it is therefore dismissed on the ground of want of jurisdiction.

30. Brig Enterprize, *Joseph W. Neal and others, owners of slaves on board.*

Presented March 14, 1854—Further papers filed June 19—Heard May 23 and 24, and submitted—Disagreement of the Commissioners—Heard before umpire October 19 and 21—Award of umpire.

Claim for damage in liberating slaves on board of said vessel under the laws of Bermuda, when driven into harbour in that island by stress of weather.

September 26.—The Commissioners disagreed on the allowance of the claim, and it was referred to the umpire.

December 23.—The umpire awarded to the claimants in this case the following amounts: to the Augusta Insurance Banking Company the sum of sixteen thousand dollars, and to the Charlestown Marine Insurance Company the sum of thirty-three thousand dollars, due the 15th of January, 1855.

31. Schooner Hermosa, *New Orleans Insurance Company and others, underwriters and owners of slaves on board.*

Presented March 14, 1854—Further papers filed June 19—Heard May 23, 24, and 26, and submitted—Disagreement of the Commissioners—Heard before umpire October 19 and 21—Award of umpire.

Claim for damage in liberating slaves forced on the Bahamas by stress of weather.

September 26.—The Commissioners disagreed on the allowance of the claim, and it was referred to the umpire.

January 11.—The umpire awarded to the Louisiana State Marine and Fire Insurance Company, eight thousand dollars; and the New Orleans Insurance Company, eight thousand dollars, in full of their claims in said case to January 15, 1855.

32. The Brookline.

Presented June 9, 1854—Further papers filed June 19—Heard June 29, and submitted—Disallowed.

For damage in reclaiming from said vessel in British waters, a deserter from a British ship of war, who had been received and was secreted on board the Brookline.

October 11.—Claim disallowed.

33. Brig Evelina.

Presented March 14, 1854—Heard October 6, and submitted—Disallowed.

For damage alleged to be caused by Her Majesty's ship-of-war Winchester running foul of the above vessel in the English Channel in the year 1833.

January 8.—Claim disallowed.

34. Brig Lawrence, *Edward Yorke and others, owners.*

Presented March 14, 1854—Heard September 25, October 6, and November 16, before the umpire, and submitted—Disagreement of the Commissioners—Disallowed by the umpire.

Seized at Sierra Leone in 1848, and condemned on charge of being concerned in the Slave Trade.

November 25.—The Commissioners disagreed on the allowance of the claim, and it was referred to the umpire.

January 13, 1855.—Claim disallowed by the umpire.

Duties on Woollen Goods, *Charles Barry, William Frost, and others, agents.*

Presented March 14, 1854, May 23, and June 15—Memorial submitted June 19—Heard August 1, October 25, and December 11 and 13—Withdrawn.

Claims for return of duties levied on woollen goods by the British Government beyond those paid by citizens of other nations, contrary to Treaty between The United States and Great Britain of 1815.

January 13, 1855.—The agent for the said claims addressed a letter to the Commissioners, informing them, that having deemed it advisable for the parties to adjust the same without recourse to the adjudication of the Board, he had effected a settlement with the Government, and desired to withdraw the claims.

Claims withdrawn.

36. The Cicero.

Presented March 14, 1854—Dismissed.

For seizure and detention for alleged violation of revenue laws.

July 21.—Not sustained. Dismissed.

37. THE JUBILEE.

Presented March 14, 1854—Dismissed.

Claim for salvage.

No evidence submitted. Claim dismissed.

38. THE ROBERT.

Presented March 14, 1854—Dismissed.

Not sustained. Dismissed.

39. THE ELVIRA.

Presented March 14, 1854—Dismissed.

No evidence submitted. Dismissed.

40. THE OLIVE BRANCH.

Presented March 14, 1854—Dismissed.

No evidence submitted. Dismissed.

The foregoing Docket contains a correct report of awards and judgments made on claims of citizens of The United States against the British Government, after full hearing and examination thereof, and we hereby place our signatures to the same, to be applied thereto in the same manner and as fully as if severally affixed to each of said awards and judgments.

The awards of moneys therein made are to be paid by the British Government to the Government of The United States, for the benefit of the several claimants, their attorneys, legal representatives, or assigns; and said awards are to be regarded as bearing date from the 13th January, 1855.

(Signed) EDMUND HORNBY,
British Commissioner.

N. G. UPHAM,
United States' Commissioner.

January 13, 1855.

REPORTS OF DECISIONS BY THE COMMISSIONERS,

AND THE

ARGUMENTS OF COUNSEL.

THE "JONES."

HORNBY, British Commissioner:

THIS is a claim made upon the British Government by the representatives of Messrs. Farnham and Frye, of Boston, in respect of losses caused by the seizure of their vessel, the "Jones," by a British cruiser at St. Helena, on the 12th of September, 1840, on a charge of being in British waters without a national character, and on suspicion of being engaged in the Slave Trade, such an offence being punishable under the 2nd & 3rd Vic. c. 73. The ship, it appears, was sent to Sierra Leone for adjudication, on the ground of there being no Vice-Admiralty Court at St. Helena—the particular offence charged being only cognizable in such a court. One, however, of the grounds of complaint is specially founded upon this proceeding, inasmuch, as it is alleged, that any Court of Record had jurisdiction over the charge under the 5th Geo. IV, c. 113. To this point I shall presently advert.

The trial came on at Sierra Leone, and in the month of November following the Judge declared the charge unsustained, and directed that the vessel should be released. Costs, however, were given to the captor, on the ground

that the error into which he had been led in seizing the vessel, was the result of the "wilful misconduct of the master."

The master was not present at the trial, nor does it appear that either he or the owners were represented before the court.

The costs were not paid; and, nobody appearing to claim the vessel, it was ultimately sold in the usual manner, for the benefit of all concerned.

Practically, then, the Commissioners are asked to review the decision of the Vice-Admiralty Court, which has never been appealed against, and which decided two points:— First, that the vessel was not engaged in the Slave Trade; secondly, that she had a national character: with reference to which latter point the court expressed its opinion of the conduct of the master, as supplying a probable cause for the seizure, by awarding costs to the captor.

The claimants approve the first portion of the judgment, but declare the latter part to be wholly unfounded in either reason or justice.

Now I do not think it was ever intended that the Commissioners should sit as a Court of Appeal from the properly constituted courts of either country; and if there were no facts before us, but those on which the Vice-Admiralty Court decided, I should, without hesitation, reject this claim on the ground that this was not a Court of Appeal.

I do not mean to say that circumstances might not arise in many cases, which would induce me to reverse the judgment of a court; but the circumstances must be of a certain character and importance. It would not be sufficient simply to show that a point of law was doubtful, or that another Judge might have taken a different view of the facts. Such matters are within the jurisdiction and province of a Court of Appeal; but if, in a case like the present, additional evidence was offered—evidence of a character tending to show that had it been brought before the Judge of the Vice-Admiralty Court, a judgment more favourable to the claimants might have been passed, or that the wrongful act of the party complained against prevented such evidence from being

taken—then, I think, the way would be opened for our action.

In the present case, the Commissioners have before them the additional evidence of the master, the supercargo, and such members of the crew as were not present at the trial. Two points therefore arise for us to determine:—First, whether this additional evidence is of such a character as to induce us to overrule the judgment of the Vice-Admiralty Court as to costs; and, secondly, whether upon this evidence we ought to award compensation in the nature of damages to the owners for the losses which they have sustained *subsequent* to the date of the judgment.

As I differ from my learned colleague on both points, I feel bound to go somewhat at length into the evidence.

In doing this, I propose to divide the case into two parts: the one having reference to the seizure and its immediate consequences; the other to the damages which may be said to have been sustained subsequently to the judgment of the Vice-Admiralty Court. Before doing so, however, I must repeat that, as a *general principle*, effect ought to be given to the judgment of every competent tribunal, when nothing appears tending to impugn the integrity or fair-mindedness of the court.

The Commissioners are asked to adopt one part of the judgment in question and to reject the other portion of it. I cannot accede to this course,—because both parts appear to me to be founded upon an equally careful consideration of the circumstances and evidence, and arrived at after equal deliberation.

The first fact in the case which has reference to the subsequent seizure, is the application of the crew of the "Jones" to Lieutenant Littlehales, of Her Majesty's ship "Dolphin," for his assistance and intervention on finding that they were about to return to the coast of Africa. The crew contended that they had signed articles to proceed to "Monte Video," and a market, and thence to a port of discharge in The United States,—the undisputed fact being that they had agreed to go to "Monte Video or other parts between the line of latitude 36° south, and back." In their affidavits, subse-

quently made in London before the American Consul, they state that the ship never did go to Monte Video, but, avoiding the South American coast, steered for the coast of Africa. The Consular Agent at St. Helena had decided, when appealed to by the master, that the crew were bound to go to the ports on the coast of Africa between the line of latitude of 36° south.

From the crew Lieutenant Littlehales learnt that they suspected there was a false set of shipping articles on board; and the mate said that the papers exhibited by the master to an officer of a Portuguese man-of-war at Loando, were headed "Ambriez," and not "Monte Video."

On this information, Lieutenant Littlehales appears to have determined to inspect the ship's papers; and—after being told by a clerk at the Custom House that the papers were not there—on meeting the master, W. Gilbert, in the street, he asked to see the "Jones'" papers. To this request he obtained what he considered an unsatisfactory and evasive answer. This is the version given of this interview by the lieutenant, as well as by his mate and a passenger on board the "Dolphin;" and it is important to observe here, with reference to the accounts of the same rencontre given by the master in two affidavits, that the supercargo, who was with the master, states that the latter said, "the ship's papers" were at the "Custom House." Now the master, in his first affidavit, states that Lieutenant Littlehales asked to see the "manifest" of the "Jones," whereupon he, the master, inquired his motive. He then goes on to say that the lieutenant repeated his request, to which he made the same answer; when the lieutenant observed that if he the master showed them, "much trouble would be saved to both of them;" upon which Gilbert states he asked the officer "if there was not a Custom House at St. Helena?" whereon Lieutenant Littlehales turned round and went towards the sea. In the second affidavit the master gives another version, as follows:—"About six or seven o'clock on Saturday afternoon I was accosted by Lieutenant Littlehales, of the British armed brig "Dolphin," who very abruptly demanded my "manifest." I did not then know

Lieutenant Littlehales. I asked who he was? He said, "he was commander of Her Majesty's brig 'Dolphin.'" I asked if he considered it a matter of right to demand my manifest in the public streets, or whether he asked it as a favour? He said he did *not* consider it a matter of right, and then said, "You won't show it me, will you?" *and before I could make answer he turned round and went away.*"

I confess I find it difficult to reconcile these two statements. Either the first long conversation took place, or Lieutenant Littehales turned away so abruptly—as described in the last statement—that there was no time for it to have taken place.

But whatever the master was asked for, whether "papers" or "manifest," the important question is, what did he say on the subject of the "papers?" and this is at least clear, for the supercargo himself distinctly declares that the captain replied *that his* "PAPERS" *were at the Custom House.*

The master and supercargo also say that the lieutenant was not in uniform. The lieutenant, and those that were with him declare that he was.

The next scene is on board the "Jones" about two hours afterwards, when no one disputes that it was the ship's "papers" that were then asked for, and no one denies that the answer *then* returned by the master was that they were at the Consul's. The master then goes on to say that he offered to bring the papers to Lieutenant Littlehales on the Monday morning; that he wrote to Lieutenant Littlehales, offering to show them to him; and that after all this, the Collector of Customs wrote to Lieutenant Littlehales an explanatory and expostulatory letter. Lieutenant Littlehales on the other hand, flatly denies that the master ever offered, either in writing or otherwise, "to show his papers" or "to give any information on the Monday morning," and he also denies "receiving" or "holding" "any communication" with the Collector after the seizure. It is not pretended that the master attempted to see or speak to Lieutenant Littlehales personally on board the "Dolphin," where the latter was to be found, although it is said that he twice endeavoured to go on board the "Jones," where the lieutenant

was *not*, for the purpose of showing him his papers, a prize crew, under a subaltern, being in possession. And it is a curious fact that neither these papers or copies of them are now before the Commisssioners, nor at any time does it appear that they were ever shown to any one whose seeing them would have facilitated the discharge of the vessel, or is there any confirmation of the alleged explanatory or expostulatory letter from the Collector of the Customs.

In the course of the argument it was urged by the learned Agent of The United States that it was the duty of the Lieutenant to have offered every facility to the master to clear his vessel, and that the master was justified in standing upon his "rights," let the consequences be what they might. It was undoubtedly the duty of the captor to *inspect* any papers offered to him for inspection by the master; but it was most unquestionably the duty of the master to have facilitated the inspection of his ship-papers by the captor. If he had done so, all the subsequent mischief would in my opinion have been avoided. Nothing would have been easier than to have sought Lieutenant Littlehales on board H.M.S. Dolphin, yet this was never attempted, and *in fact no attempt* was ever made to show this officer the papers, nor does it appear that the subaltern in command of the prize was ever asked to look at them, or was even told that the captain had them with him when he went alongside the "Jones" on the Monday following the seizure. Nor does it appear in the affidavits of the master and supercargo, that the former really had his papers with him on these occasions, or went for the purpose of showing them. At page 238 of the printed evidence, both these individuals say that James Gilbert went "with a view of getting on board the vessel *on business*." I confess that it does appear to me to be a strangely suspicious circumstance, that the master never attempted to explain the facts of the case to Lieutenant Littlehales, when his obvious duty, and indeed his interest and that of his owners, demanded that on being refused admission to his ship, he should have gone at once to Lieutenant Littlehales, asked him the reason, and showed him that his papers—if he had them (which even now does not very clearly appear)—were all right and as they

ought to be. That this would have been the conduct of a man *really* anxious to prevent a calamity, such as that which has ultimately fallen on the owners, appears to me to be indisputable.

The next step in the case is the overhauling the vessel and the finding of two letters, both addressed to the supercargo: one being from the owners, and the other from a Spaniard of the name of D. Masoro Maray. They are as follows:—

Messrs. Farnham and Co. to Mr. Sexton.

Salem, March 12, 1840.

Dear Sir,—Your much-esteemed favour of December 4 from Ambriz, per "Quill," was promptly delivered on the arrival of that vessel, February 2. Your remarks on the trade with Doctors Wilson and Savay, and others, at Cape Palmas, are noted, but will not be acted upon at present. We have no doubt there is a field there to work in to advantage, but we shall probably omit it till your return. The information, however, is very acceptable. Your sales at other places were so limited that the profits will not pay for the delay; but we think you will have found a very good market at Loanda for all the flour you had on board, provided you did not report over one hundred barrels. If you obtain the quoted rates, or even thirty dollars per barrel, for the 470 barrels remaining, the "Sarah" must make a fine voyage, unless she is very badly mismanaged on her return passage, of which there is much reason to fear. We regret much that we were so greatly deceived in Captain Cork.

We know not whose fault it was that the specie was left in New York. The writer found it in the safe after you sailed, and used it; he knew nothing of it before.

We heard of your arrival at Sierra Leone in twenty-four days by the British man-of-war brig "Butterfly" and her prize; but your letters did not come to hand till January 21 (four months after they were written), and then by the "Saladin."

George and Cork's letters of November 21, *viâ* Rio, came to hand two weeks since, and we hope soon to hear in the same way or direct. The "Seamew" arrived at St. Helena January 6, and sailed 14th for Africa, and perhaps will soon get home. We hope you closed your sales however before she arrived at Loanda. The "Quill" is here, and idle we believe. Nathan Augustus Frye was married last night, and probably will not wish to sail very soon for Africa. *It is not known that the "Jones" is going to Africa, and we hope she will not be followed very closely; but the "Jones" is a fast sailer, and we hope will have a short passage.*

Mr. Hunt has just been in to ask plainly, if the "Jones" goes to Africa. He writes to Captain Bryant by her. He says the "Quill" is doing nothing yet.

Yours truly,

(Signed) P. J. FARNHAM AND CO.

Captain Francis W. Sexton, Ambriz.

D. Masoro Maray to "Captain Sequeson." *

(Translation.) *Borna, June* 16, 1840.

Sir and esteemed Friend,—I hope you are well. I inform you now of all the trouble I had respecting the ivory. I am in expectation of "Chibuca," containing one hundred teeth of ivory, "*together with one hundred slaves;*" and yet I shall not be able for the present *to purchase them.* It would not be amiss if you please to let me have some cash for me to finish this business, and also the barraca. At this moment I am in expectation of the boat from Loango, with her cargo, and also the launch in question. You will hear several more particulars from Juan Maray, who will communicate them to you in person. My desire is, Sir, that you may keep in health.

Your faithful servant,

(Signed) DOMINGO MASORO MARAY.

Besides these letters, irons, spare plank, and articles used for slave-food were found.

This is the evidence with reference to *the cause* of seizure. And as the judge at Sierra Leone, whose experience enabled him to form an opinion on such a subject, has decided that the evidence was insufficient to sustain so serious a charge, I have no hesitation in giving my full assent to that judgment; but on the other hand I cannot but feel, when endeavouring to place myself in the position of Lieutenant Littlehales, and viewing these events and circumstances separately and in the order in which they happened, and not collectively and from an epoch long subsequent to the time of their occurrence, that the Judge at Sierra Leone was right in considering the error of the seizure materially induced by the conduct of the master. The suspicious circumstances were undoubtedly those connected with the shipment of the crew, their assertions with regard to false papers and the objects of the voyage, the evasive answers and questionable conduct of the master, and lastly, the two letters to which I have alluded.

The seizure being complete—on the *sixth day* after it the vessel sailed for Sierra Leone with three of the "Jones" crew. It was not alleged that the master, or the supercargo, asked to be allowed to go, although this is sought to be inferred when it is stated, *but contradicted*, that he twice, before the Monday previous to the departure of the vessel,

* Mistake for Sexton.

tried to get on board. About six or seven weeks after the arrival of the vessel at Sierra Leone she was libelled, tried, and declared free.

The reason why Lieutenant Littlehales sent the vessel for adjudication before a Vice-Admiralty Court, instead of libelling her before a Court of Record at St. Helena, is stated to be that—the latter Court had only jurisdiction under 5 Geo. IV, c. 113, to try the simple question of *whether or not the ship was* ACTUALLY *engaged in the Slave Trade*, while the charge made against the "Jones," involving the doubt of her nationality, suggested by the suspicion of her having double or false sets of papers on board, coupled with *a suspicion* of her being engaged in the Slave Trade, being only *an offence* created by the 2 & 3 Vict. c. 73, it could not be tried by any other court except that specially pointed out by the statute.

I come now to the second division of the case, namely, to that part which has reference to the cause of the damage subsequent to the decree of the court; and the first question which I find myself called upon to answer is this,—Was the master justified, under the circumstances, in abandoning his vessel so entirely as he did? I believe that he was; and if I am right in the view which I take upon this part of the case, namely, that the conduct of the master in abandoning his vessel was, under the circumstances, *unjustifiable*, and that the losses subsequent to the judgment of the court were in the first instance the result of such abandonment by him, and afterwards by his principals (the owners of the vessel), it follows that it would be an act of injustice to hold the British Government responsible in damages for consequences which were the natural result of the conduct primarily of the claimant's agents, and subsequently of their own. In making these remarks I am of course confining myself to the losses suffered *after* the judgment decreeing the vessel "recete."

Now in order to test the conduct of the master, I propose to inquire whether, as between insurers and owners, such an abandonment (supposing capture to be a risk insured against)

would have been justifiable, so as to render the former liable, as on a total loss, to the latter; and on looking carefully through the cases on the subject, I do not find anything to justify me deciding this case upon the basis that the master acted either prudently, fairly, or for the interests of all parties. The rules laid down, so far as they concern the master, and in so far as the British Government may now, for the *purpose of illustration*, be considered as standing in the position of insurers called upon to pay as in the case of a total loss, are, in my judgment, equally applicable. It is stated in *Phillips on Insurance* (vol. i. page 38), that "abandonment is only justifiable as against insurers when the thing insured is *irretrievably* lost;" and it is elsewhere laid down that the total loss upon which abandonment is naturally consequential must be "clear and absolute," that is "*where all probable hope of recovery is gone.*" Lord Mansfield too, in giving judgment in a case in which the alleged loss was the consequence of a capture, said (*M. & J.*, 2 *Douglas* 232) the question is, "whether the consequences of the capture were such as, notwithstanding the recapture, occasioned a total obstruction of the voyage, or whether they merely occasioned a partial stoppage, as in the case of '*Hamilton* v. *Mendes.*'" It has been held also that, although capture will sanction an abandonment, as in the case of a total loss, yet when followed by a recapture or *restitution* (and it must be recollected that by the maritime law no change of property takes place until after condemnation) *it does not do so;* and this doctrine is practically laid down by Chief Justice Marshall, in a case cited in the work of Mr. Phillips, to which I have referred. In the case of *Gardere* v. *Col*, 7 *John's* 514, Mr. Justice Yates says that it is the bounden duty of a master to labour diligently for the recovery of his owner's property; and that if he does not, he lays himself open, after abandonment by his owners, to an action at the suit of the insurers, whose agent by that act he becomes in the contemplation of the law. And in numerous other works it is laid down as a maxim of maritime law, that it is incum-

bent on the master "to stick" to the vessel until the last moment, and even to its "planks." I have merely cited these authorities in proof of what I consider to be the undisputed duties of a master of a vessel, and if a fulfilment of them were necessary to enable an owner to recover as against his insurers, there is no good reason for assuming them to be unnecessary as between parties situated as the claimants are towards the British Government. If, then, in the present case, the insurers could not have been called upon to pay, as in the case of a total loss, it is difficult to discover any principle which should impose a heavier obligation on the British Government.

Having then determined the question of what was the duty of the master under the circumstances of this case, I proceed to examine the grounds upon which its performance is sought to be excused; and the first is that Lieutenant Littlehales did not send him and the supercargo with the prize crew to Sierra Leone. I do not find, however, that either of them ever asked to go, nor is it stated anywhere that they were unable to go there, or that no subsequent opportunity presented itself; while the presumption is, from what is well known concerning the intercourse between the African coast and St. Helena in 1840, that communication between the two places was frequent. Not only, however, was no attempt made, either by the captain or supercargo, to accompany the vessel (for the alleged refusal of the subaltern in command of the "Jones" to permit them to come on board only extended to the Monday, and the vessel, it must be borne in mind, did not sail before the following Saturday), but it does not appear that they ever attempted to apprise, or ever did apprise, by letter, or otherwise, the factors of Messrs. Farnham and Frye on the coast of Africa, or in short any of the trading connections of the owners; and it is in evidence that they had large trading connections on the coast, who could have watched the proceedings on behalf of the owners, and who might have reclaimed the vessel, the moment she was declared free from the charge made against

her, and enabled her to continue her voyage.* Nothing, however, was done; the most ordinary precautions against consequent losses were systematically neglected, and thus it appears from the first, that those most concerned and interested in the case, made up their minds to wash their hands of the whole affair,—therein, as it appears to me, neglecting the very first duties of men in their position, and strongly suggesting the suspicion that the master and supercargo, *at least*, must have had pretty strong grounds, only known perhaps to themselves, for suspecting that the charge would be substantiated,—in which case they may have considered that their own personal safety within the jurisdiction of the court, would have become somewhat problematical.

It has been said, however, that the master, being left without money or clothes, could not proceed to Sierra Leone. But the same means which enabled him to take the longer journey to England, and thence to America, would also, it may be fairly presumed, have enabled him to make the shorter journey to the coast of Africa.

Passing by the question as to whether the master and supercargo were guilty of misconduct, it becomes important to ascertain the course pursued by the owners on their being made acquainted with what had taken place.

In the month of January, 1841, they had received intelligence of the capture and sending of the "Jones" to Sierra Leone, and as early as the 8th of February in the same year, they had notice of the clearance of the vessel by the judgment of the court. Both prior and subsequent to these dates, they had other vessels trading on the coast; their supercargo had returned to Africa, and yet no attempt was made by them, or by any one in their behalf, to reclaim the "Jones," or to prevent the damage which was then going on. These are *laches* which I cannot overlook. It is conduct strictly in keeping with that of the captain, and was probably suggested

* During a greater portion of the time that the "Jones" was at St. Helena and at Sierra Leone, it appears from the papers which have been handed in, in the cases of the "Tigris" and "Seamew," that one of the partners of the house, N. A. Frye, was actually on the coast, and might therefore have personally attended to his own and the interests of his co-partners.

by him; and throughout, it savours of a determination, through the instrumentality of The United States' Government, to make the British Government answerable, not only for losses sustained through the error of an officer in its service, but also for losses—the immediate result of *laches* which even the most vexatious, unjustifiable, and improper conduct on the part of the British authorities would have neither justified nor excused.

Feeling, therefore, that the seizure, though not justified on the ground upon which it has been asserted the vessel was seized—namely, that she was engaged in the Slave Trade—was the consequence of the suspicions excited in the mind of Lieutenant Littlehales by the crew, of the unsatisfactory conduct of the master, and of the discovery of the letters addressed to the supercargo, I must say that I agree with the spirit of the judgment pronounced by the Vice-Admiralty Court at Sierra Leone, which, by its terms, attributed, to a very great degree, the "error of the seizure" to the conduct of the master. The case, however, is now brought before the Commissioners upon different grounds. We are not asked to declare the vessel guilty or not guilty of the charge under which she was libelled; but we are simply asked to give the owners compensation for any damages they may have sustained through the conduct of an officer of the British Government. To this extent I am willing to accede to the prayer of the claimants; but I cannot go further, and compensate them for losses which appear to me the direct and natural result of their own *laches* and those of their authorized agents. One fact, however, has entered into my computation of the compensation to which I conceive the owners have a fair claim, and I mention it, because, on principle, I shall feel it my duty, whenever it occurs, to treat it in the same way. To the judgment of the court the captors thought fit to enter an appeal; and, although such a proceeding does *not* appear in the present case to have in any way affected the vessel, yet I consider that where an appeal is entered without any sufficient or probable cause for disputing the judgment of the court, and subsequently abandoned, the parties *intended*

to be affected thereby are fairly entitled to compensation for any expense, inconvenience, or loss of time to which they may have been put.

The cargo, of whatever it consisted (and on this head there is very great disparity both as to quantity and value in the evidence of the master and owners, and that of the supercago *—see statement in memorial and affidavit of F. Sexton, p. 218 of printed Evidence) was sold simply for the benefit of all concerned, because it was deteriorating in value in consequence of the neglect of the owners to look after it, after they had notice that the vessel was acquitted; and for this reason I do not consider them, in justice or equity, entitled to more than the proceeds of the sale.

Estimating, therefore, the detention of the vessel consequent on the seizure—as from the 12th of September, 1840, to the 12th of May, 1841, a period of eight months—at 1,500*l.*; putting down, also, the probable injury sustained by the vessel in that climate at a third of its alleged value, that is to say, at 1,000*l.*; and awarding for the loss suffered on a forced sale of stores, rendered necessary by such detention, at 300*l.*, with interest on these three sums for twelve years and six months, at five per cent. per annum, from September, 1840, to February, 1853, equal to 1,749*l.*; I adjudge the claimants these four sums of 1,500*l.*, 1,000*l.*, 300*l.*, 1,749*l.*, together with the sum of 1,635*l.* 3*s.* 7*d.*, the amount realized by the sale of the ship, stores, cargo, &c., and also the bags of coin and specie found on board the Jones, and now in the custody of the Marshal of the Vice-Admiralty Court of Sierra Leone, making a gross total, exclusive of the said coins, &c., of 6,184*l.* 3*s.* 7*d.*

* Since this judgment was delivered, some papers have been put in, in which Sexton states that his evidence, made on oath, was to a great extent false, that Messrs. Farnham and Frye would not allow him to correct it, and that his conscience now induces him to repair his fault so far as he has it in his power, by telling the truth.

MR. UPHAM, United States' Commissioner.

THE barque Jones, owned by P. J. Farnham and Company, of Salem, Massachusetts, having shipped her crew for Monte Video, and other ports north of the thirty-sixth parallel of south latitude, sailed from Boston, in March 1840, for the west coast of Africa, having a valuable assorted cargo for a trading voyage upon that coast.

She arrived at Ambriez, on the coast of Africa, on the 17th of June, and landed, and disposed of a considerable portion of her cargo, consisting of flour, biscuit, soap, candles, tea, fish, furniture, lumber, and gunpowder. After receiving on board a quantity of African produce, she sailed for Loando, on the same coast. On this passage she was, in violation of the rights of her flag, boarded and overhauled by Her Majesty's armed brig "Water Witch," but, after examination of her papers and cargo, was permitted to proceed on her voyage.

At Loando the Jones landed a considerable quantity of merchandize, and received in return ivory, and other African produce. From Loando she returned again to Ambriez, and, after taking on board more produce, sailed for St. Helena, where she arrived on the 24th of August, 1840.

She was regularly entered at the Custom House, and had remained at St. Helena twenty-one days, until the 14th of September, discharging and receiving cargo, when she was seized by Her Majesty's ship "Dolphin," Lieutenant Littlehales, commander, and taken from St. Helena to Sierra Leone for adjudication, on charges specifically set forth in the affidavit of seizure, the opinion of the court, and other papers in the case.

The grounds of seizure of the "Jones," as set forth in the affidavit of A. C. Murray, mate of the "Dolphin," taken before the officiating Judge of the Vice-Admiralty Court of Sierra Leone, on the 5th of October, 1840, are, that the "Jones" "was found in British waters, without any

national character, and having no ship's papers, or colours, on board, and for being engaged in, and fitted and equipped for, the Slave Trade, contrary to the provisions of the Acts of 5 Go. IV, c. 113, and of 2 & 3 Vic. c. 73."

The officiating Judge in the Court of Vice-Admiralty states the charge in the same manner, reciting that it was alleged "the barque 'Jones' had violated two Acts of the British Parliament, viz. the 2 and 3 Vic. c. 73, and the 5 Geo. IV, c. 113; against the *first*, for being found in British waters without any national character, having no ship's papers on board; and against the *latter*, for being engaged in and equipped for the Slave Trade."

Lord Palmerston states the case in almost the same words. He says that the "Jones" was seized upon two grounds:—

"*First*, under the Act of 2 and 3 Vic. c. 73, for being found in British waters without having ship's papers on board, and for being therefore without any national character."

"*Secondly*, under the Act of 5 Geo. IV, c. 113, for being engaged in and equipped for the Slave Trade."

In each of these statements two distinct and independent charges are alleged as separate grounds of seizure, and each of them are based on different statutes. It is perfectly clear, however, that the first charge, "of being found in British waters, without having ship's papers on board," is not an offence, as alleged, under the 2 and 3 Vic., and that no jurisdiction over, or right of seizure of the vessel, exists by that statute, whatever may be her papers, except as based on her *connection with the Slave Trade;* and this view of the statute is important, as an erroneous construction in this respect has caused an undue and unwarrantable importance to be given to a controversy which has arisen as to the papers of the vessel.

A brief reference to the Act of 2 and 3 Vic. will sustain us in this position. This Act empowers British cruisers "to capture Portuguese vessels *engaged in the Slave Trade*, and other vessels *engaged in the Slave Trade*, not being entitled

to claim the protection of the flag of any state or nation;" and, by its terms, unless the charge of being engaged in the Slave Trade is sustained, it becomes wholly immaterial whether the "Jones" had papers or not, so far as the statute of 2 and 3 Vic. is concerned.

The charge, therefore, "of being found in British waters without having ship's papers on board, and having no national character," is no allegation of an offence against 2 and 3 Vic., and the whole proceeding, so far as it is based on that Act, falls to the ground.

The only remaining ground of seizure of the vessel is "her being engaged in, and equipped for, the Slave Trade," which is charged as a violation of the Act of 5 Geo. IV. It becomes necessary, then, to look into the provisions of that Act. We concede that the charge of being concerned in, and equipped for, the Slave Trade is well alleged as against that statute, and the vessel is to be holden responsible if the charge is sustained, and the offence is prosecuted agreeably to the requirements of law.

By that Act, however, it appears that all vessels, seized for being concerned in the Slave Trade, "shall and may be sued for, prosecuted, and recovered in any Court of Record, or Vice-Admiralty, in any port *in or nearest to* which such seizure may be made, or to which such vessels, if seized at sea, or without the limits of any British jurisdiction, may most conveniently be carried."

By this Act vessels seized "*at sea*, or without the limits of any British jurisdiction," are to be taken to *the nearest* and *most convenient* port for trial; but, if within a harbour, and an established and competent jurisdiction, they are to be *there* tried. The vessel in this case was seized at St. Helena, where there had long been a Court of Record of an established character, and competent to try any felony or capital offence against the laws of Great Britain. The removal, therefore, of the vessel from this jurisdiction to the remote jurisdiction of Sierra Leone, upon the coast of Africa, was an illegal act.

The object of the Act 2 & 3 Vic. undoubtedly was to give

authority to seize, in *the open sea*, Portuguese vessels and vessels having no national character, concerned in the Slave Trade.

In *harbour, or in British waters*, Portuguese and other vessels had always been liable to seizure, under the prior Act of 5 Geo. IV, if their masters were engaged in fitting them out for the Slave Trade. The Act of 2 & 3 Vic. was not at all required to give jurisdiction over the "Jones" in the *harbour* of St. Helena. If she was guilty of being concerned in the Slave Trade there, whatever might be her papers, she could be seized, and tried at once, under the Act of 5 Geo. IV, where the parties were all present, and ready for trial, without removal to a distant jurisdiction where the very same issue, of *being concerned in the Slave Trade*, was to be tried. Her removal, therefore, to Sierra Leone was without any excuse, and was rendered peculiarly oppressive against these owners, as their captain was excluded from his vessel without money or means of conveyance to the remote jurisdiction of Sierra Leone, a thousand miles distant by water, and the trial was proceeded with without any attendance on the part of the owners.

The proceedings of Lieut. Littlehales were in clear violation of the Act of 5 Geo. IV, under which the only valid offence against the vessel was charged, and, under the circumstances of the case, were of a character that should, of itself, render him and his Government responsible for all damage subsequently accrued to the owners in the loss of their vessel. If the seizure had been made and the offence had been solely set up under the 2 & 3 Vic. it would, in my opinion, have made no difference, as there certainly was the alternative of a fair and speedy trial of the vessel at St. Helena, under the Act of 5 Geo. IV, for the only essential charge against her; and, under the circumstances of this case, it would have been the imperative duty of Lieut. Littlehales to have proceeded under that statute. His removal of the vessel to Sierra Leone, under any form of process, would have been in violation of the spirit of the statutes relative to the Slave Trade, taken in connection with each other, and

against the first principles of right and justice in the trial of offences.

We shall now proceed to consider the proceedings had at Sierra Leone.

Immediately on the arrival of the vessel there, it appears, from the papers in the case, that public notice was given, for the first time, of the offence for which the vessel was seized, by posting up a notice "on a conspicuous part of the public wharf of Freetown," fourteen days before the adjudication of the court, not that the vessel was to be tried, but that, according to the provisions of law, she was to be "condemned, unless the owners appeared and show just cause to the contrary."

For the facts proved on trial relative to the offence charged, we shall look to the decision of the court, without going behind it, unless it should be hereafter deemed necessary.

The knowledge of the court, by its residence on the African coast, with all matters of African commerce, and its familiarity with every fact tending to show a connection with the Slave Trade, is far greater than any information that can be possessed on these subjects by this Commission. So long, therefore, as the decision of the court is confined to facts of this nature, relative to the offence on trial before it, we shall regard it as the highest authority of which the case admits. The captors, also, cannot complain, as the decision of the court at Sierra Leone was made after a full hearing on their part, and an examination of all testimony they chose to present.

The witnesses also, selected and taken to Sierra Leone, had been engaged in a bitter controversy with the captain of of the vessel, and were in open hostility to him. Notwithstanding these adverse circumstances, and the fact that the court were to proceed by law, in the outset, on the assumption that the vessel was guilty, her acquittal on all the grounds on which she was seized was most triumphant and complete. The court, in its opinion, from which I shall make full extracts, says:—"I shall dispose, in the first place,

of the question as regards this vessel's national character; for, if it be made to appear to my satisfaction that she was duly documented, and that there are fair and reasonable grounds for presuming that she was entitled to claim the protection of the flag and pass of The United States, the allegation against her, under the Act of 2 and 3 Vic. c. 73, must consequently fail and fall to the ground."

"I have had already occasion," he observes, "to remark, that the vessel was visited and detained for two hours, on the 2nd of July last, by Her Majesty's brig "Waterwitch," and I have no rational doubt, but, that her papers then exhibited to the boarding officer, fully proved her American character. The vessel having gone to St. Helena, and having remained there twenty-one days, discharging and receiving cargo, must necessarily have come under the immediate notice of the constituted authorities of that island; and it cannot be supposed that, at a place where a Custom House is established, a vessel would be allowed to lay so long, and transact business with the island upon an extensive scale, and which must have been done with the knowledge and consent of the Collector, without his satisfying himself of her national character."

To ascertain this point, the first preliminary step would be the production of the ship's papers at the Custom House. I have, therefore, come to the conclusion that the charge of the vessel "being found in British waters, without a national character, must be dismissed."

The court then proceeds to examine into the charge of the vessels being concerned in the Slave Trade. In remarking on the paper which had been signed by a portion of the crew of the "Jones," protesting against going to the coast of Africa, and which is alleged as the original cause of proceeding against the vessel, the Judge states "that not even the most distant allusion is made by the seamen, whose names are affixed to that paper, that the vessel had been, or was about to be, engaged in the Slave Trade." He states, as his conclusion, after a full examination of the testimony presented, "that not a single article of slave equipment is

established against her;" that "the evidence of the witnesses has literally produced nothing which can by possibility affect the character of the vessel;" that "no indication has been adduced, showing the vessel's employment in the Slave Trade, and that there has not been a single paper found on board the ship that could warrant him in drawing such a conclusion."

And he further says that, "After having carefully reviewed the grounds upon which sentence of restoration had been given by him, with a view of discovering, if *possible*, SOME PROBABLE CAUSE OF SEIZURE as regards the vessel's alleged equipment for the Slave Trade, he never saw a case so free, EVEN FROM SUSPICION."

Thus the vessel was fully exonerated by the decision of the court on all the grounds on which she was seized, and the judgment is as clear, distinct, and explicit as words can make it, that there was NO PROBABLE CAUSE, or ground of suspicion of the vessel's being concerned in the Slave Trade.

The necessary result of this finding by the court is, that the vessel must be discharged; and not only so, but, the judgment being that the seizure was without probable cause, Lieutenant Littlehales, and the Government for which he was acting, are left entirely unprotected as wrong-doers and trespassers from the beginning.

By a most singular proceeding, however, the court has undertaken to consider another charge, without the statute, and of which it had no cognizance, which was of a personal character, against an individual who was not present, and not against the vessel, and which, whether well or ill-founded, could in no manner avoid or alter the judgment previously delivered. Notwithstanding the Judge had fully discharged the vessel on all grounds on which she was seized, he assessed her in costs, as he says, "for resistance of the master to fair inquiry," and for "his wilful misconduct in resisting *constituted authorities;*" and it is contended that the error of the court, in this respect, is to overrule its decision in the matters strictly before it.

Now the entire evidence on which this charge is founded

is before us in writing, and after full examination of it, we express the opinion with entire confidence, that it is wholly unsustained by testimony.

But admitting it was fully sustained, and that Captain Gilbert had forcibly resisted British authorities, so that he had been capitally liable for an offence of that description, it would have made no difference as to the decision, or liability of this vessel as to other matters charged against it.

If the vessel is exonerated and cleared from all suspicion of offence, the hasty or wilful misconduct of the master, in resisting a British armed force, has nothing to do with the national character of the vessel, or her being engaged in the Slave Trade.

He might have resisted the more obstinately for the very reason that he knew his vessel was clear of all probable cause of charge, and because he believed its seizure was an abuse of authority; but, on whatever ground he might make such resistance, it would be an offence of which no cognizance could be had, except the party was specifically arraigned, and on trial for that cause.

It is an offence also, for which a trial could only be had at St. Helena, where the acts complained of were committed, and before a jury of the country.

No provision of the statute, or any principle of common law, gives authority to the court to assess a vessel in costs, when discharged from all legal ground of seizure, and probable cause of offence. The court might, for proper cause, have omitted to tax costs against the captors, but this is the utmost extent of any discretionary power vested in them, in such case.

In statutes where the delivery of papers is an imperative duty, as in the Seamen's Act of 7 & 8 Vic. c. 112, s. 56; where the master of a vessel is required to produce certain papers to the Consul, a refusal to deliver is a distinct offence, and is punishable under a penalty of 20*l*. Here there is no requirement to deliver papers.

An assessment of costs against the vessel clearly could not be made under the 2 & 3 Vic., as that statute provides

that "no court shall proceed to condemn any vessel," (and if so, it cannot assess her in costs,) "where the owners shall establish, to the satisfaction of the court, that they are entitled to claim the protection of the flag of a State other than Great Britain, or Portugal." And this provision further shows that the Act of 2 & 3 Vic. was intended to apply merely on the high seas, and that, in harbour, the only act justifying the seizure of a vessel engaged in the Slave Trade, is 5 Geo. IV.

The case then shows that Lieutenant Littlehales stands condemned, by a court of his own choosing, on a wholly *ex parte* examination, and by a judgment unimpeached, of the seizure of a vessel having an established national character, and against which there was no probable ground of charge of her being concerned in the Slave Trade. Such being the case, it is clear that the party offending is directly responsible to the owners of the vessel. No obligation rested on the owners to follow their property to a remote jurisdiction, to rescue it from the control of law thus unwarrantably asserted.

No principle of common law is plainer, than that trespassers and wrongdoers, *ab initio*, in the seizing and removal of property, are at once personally liable, and it rests not in their mouths to say, that the party aggrieved should not prosecute them, but must follow the property and abide the result of the legal proceedings instituted against it. With much more propriety might the owners of the "Jones" have said that Lieutenant Littlehales, after the discharge of the vessel, instead of instituting an appeal from the decision of the court, which he never prosecuted, should have at once returned the vessel to America, and made ample indemnity to the owners for all costs and damages for its illegal seizure and detention.

For the seizure of a vessel without probable cause, the the legal rule of damage is full restitution and compensation for all costs and injury sustained.

We hold, for the reasons thus set forth, that the following points are sustained:—

I. The not having ship's papers is not an offence under 2 & 3 Vic., and is of no consequence in any way except as secondary and subsidiary to the charge of being engaged in the Slave Trade.

II. Where no probable cause, or ground of suspicion exists, of being concerned in the Slave Trade, no right of entry upon, or seizure of any vessel exists, either by 2 & 3 Vic., or by 5 Geo. IV; and whoever enters upon or seizes such vessel, is a wrongdoer from the beginning.

III. In case of entry upon, or seizure of a vessel under such circumstances, the owner is not bound to follow the property and take an appeal from any proceedings of the party, but he has, at once, a remedy on the wrongdoer, or his aiders and abettors, if he so elects.

IV. Where a vessel has been seized, on a charge of being concerned in the Slave Trade, and is acquitted from all grounds of probable cause of being concerned in such offence, the court cannot impose costs against the vessel "for resistance of the master to constituted authorities" in seizing the vessel; but it is a personal and distinct ground of offence, that must be separately prosecuted. Further, it cannot assess costs against the vessel in any case when discharged from all probable cause or suspicion of the offence for which it was seized.

V. Where a vessel is seized in harbour, and is subject there in all respects to the jurisdiction of competent authorities for the punishment of the offence charged against her, the removal of such vessel to a remote and distant jurisdiction for trial, even though it may be done under the form of law, is an unjust and oppressive act, in violation of the spirit of British institutions.

VI. The lowest rule of damages for the seizure of a vessel without probable cause, or colour of right, is full compensation for all injury incurred.

Having arrived at these results, it would be unnecessary to go further were it not for the exaggerated and erroneous statements that have been made as to opposition "to constituted authorities;" and the attempt to palliate and excuse the conduct of Lieutenant Littlehales, to the prejudice of the fair consideration of this case, and the just rights of the parties.

We go into the consideration of this matter with great reluctance for the reason of the time it must consume, and that it is wholly irrelevant to the proper issue between the parties; but so much prominence has been given to it in the correspondence relative to this claim, and the evidence upon it has been so imperfectly understood, that we deem it our duty to look into the facts, to see how far any charge of the kind is borne out by the testimony, and to determine whether any justification or mitigation of the circumstances of the seizure of the vessel can be drawn from it.

We will first state the charges made as to "resistance to constituted authorities," and then compare these charges with the evidence on the subject.

Before doing this, however, we would state the facts relative to the arrival and position of the "Jones" in the harbour of St. Helena, and the laws of the two countries applicable to the custody of her papers while in port. We have already stated the decision of the court that there was no probable ground of charge against the "Jones," of being concerned in the Slave Trade; and we may here add the sworn testimony of Mr. Frye, "that he had been a member of the firm of Farnham & Co. for twenty years, and that he had neither directly nor indirectly been concerned in the Slave Trade: nor, according to the best of his knowledge and belief, had Mr. Farnham, or any other partner, ever been concerned in the Slave Trade; and that the barque "Jones" was fitted out solely for carrying on a legitimate trade, and without the slightest intention or remotest design either directly or indirectly of engaging in the Slave Trade."

The "Jones," as previously appears, cleared from Boston in March, 1840, and proceeded with a valuable cargo of assorted merchandize for the western coast of Africa. After trading at different places along that coast, and exchanging a considerable portion of the original cargo for African products, she left for the Island of St. Helena, where she arrived on the 24th of August.

Immediately on her arrival Captain Gilbert, as is shown by his testimony, and that of the supercargo, "caused the vessel to be entered at the Custom House, and handed in there a manifest of articles intended for sale at St. Helena. He then proceeded to The United States' Consulate, and there deposited the register of the vessel, ship's articles, list of crew, manifest of outward cargo from Boston, and bill of health also from Boston."

The laws of Great Britain, see Act 3 & 4 Will. IV, cap. 52, require that "the commander of every vessel arriving from ports beyond seas, at any port in the United Kingdom, shall, within twenty-four hours from his arrival, make due report of his ship, and shall make and subscribe a declaration to the truth of the same before the collector or comptroller of the port, and such report shall contain an account of the particular marks, numbers and contents of all the different packages or parcels of goods on board such ship, and of the place or places where such goods were respectively taken on board, and of the burden of such ship; the country where it was built and belongs; the name of the master and the number of seamen, stating how many are subjects of the country to which the ship belongs, and how many are subjects of some other country." Similar regulations are believed to exist as to all colonial ports. It is further lawful and customary for agents of the collector to board all ships coming within their jurisdiction, and remain on board them until the goods have been delivered from them. They are at all times while in port strictly under the watch and guard of the collector.

It is made the imperative duty also of the Collector of Customs, commanders of forts, governors of colonies, &c., to

guard against and prosecute for all violations, within their jurisdiction, of the laws prohibiting the Slave Trade.

The laws of The United States, passed February 28, 1803, in relation to commercial agents or consuls, provide "that every master of an American vessel, immediately upon his arrival at a foreign port, shall deposit his register, sea letter, and Mediterranean passport with the American consul, or commercial agent, at such port, under penalty of five hundred dollars, which the consul may recover in his own name for the use of The United States."

These papers are required by statute to remain in the hands of the Consul until the master has exhibited to the Consul his clearance from port. The Consul is also required to enter on his Consulate records the time of the receipt, and delivery of these papers.

Provisions of a similar character are believed to be universal as to the power and duties of the Consuls of all nations.

These laws had been fully complied with, as we have already shown, by the deposit of the proper papers of the vessel at these offices.

It should be further understood that these requirements, as to ship's papers, are of such public character and notoriety, that no master of an armed vessel in her Majesty's service, who, from his position, is necessarily familiar with the ordinary details of commercial intercourse between nations, can be supposed to be ignorant of them.

The vessel was thus duly entered in port, and had remained there twenty-one days from the 24th of August to the 14th of September, as appears by the decision of the court, "unmolested, having during that time discharged a large quantity of flour, biscuit, and other articles, and shipped thirty-nine bales of goods from the town," when, late on Saturday afternoon, Lieutenant Littlehales met Captain Gilbert, the master of the "Jones," in the street in St. Helena, and demanded of him the *ship's papers;* and the charge of "wilful misconduct and illegal opposition to constituted authorities" arises out of a refusal, as it is said, to produce

the ship's papers at that time, and a refusal, on a subsequent demand made soon after, the same evening, on board the vessel. No other demand for these papers was ever at any time made.

Having stated these facts we will now proceed, as we before proposed, to specify the charges as to the resistance complained of, and compare these charges with the evidence on the subject.

The court states: "that the resistance of the master of the "Jones" to fair inquiry in having refused to produce his papers for inspection to the commander of the "Dolphin" probably led to the seizure of the "Jones," and this refusal he designates as "wilful misconduct and illegal opposition to constituted authorities."

Lord Palmerston, in his letter to Mr. Bancroft of December 9, 1847, represents the testimony on this subject in this manner. He says that Mr. Littlehales having met Mr. Gilbert in the street, requested to see his ship's papers, and Mr. Gilbert "refused to produce them," and that Mr. Murray afterwards asked him for his papers, on board the vessel, and Mr. Gilbert "again positively refused to produce them, and said they were in the possession of Mr. Carroll." Lord Palmerston then says that Mr. Littlehales, "on learning this," went to Mr. Carroll's office, and there requested the production of the papers in the presence of Mr. Murray and Rowe, officers of the "Dolphin," Mr. Pike, admiralty passenger, and Mr. Carroll; and that, on this occasion, as he had done before, Lieutenant Littlehales disclaimed any right to call for the papers on shore, but said he had that right afloat, and it might be a convenience to both parties to have the papers shown to him at once, but Mr. Gilbert however *pertinaciously and peremptorily refused to show them.*"

Such are the allegations, and conclusions at which Lord Palmerston arrives. On examining the testimony however, in the case, it will be found that the third meeting represented by Lord Palmerston to have taken place, never occurred. It is a mere repetition, doubtless by mistake, of the first meet-

ing, only; in the repetition, the facts are stated as taking place, after the demand for the papers on board the vessel was made, and after Mr. Gilbert's reply that the papers were in the possession of Mr. Carroll, when, "on learning this," as Lord Palmerston says, Lieutenant Littlehales went to *Mr. Carroll's* OFFICE, and *there* requested the papers. So that the third repetition of this statement, the particular cause, or occasion on which the demand was made, and the place of making it, are all without foundation in fact.

We have no belief that this error was designed, but we allude to it merely as an instance of the hasty, and inconsiderate manner in which this case has been examined, and conclusions have been arrived at.

But this is not all; the assertion that Captain Gilbert refused to show his papers, at any time, is not sustained by the evidence. The only pretence pointed out by Lieutenant Littlehales as constituting a refusal to show his papers is that Captain Gilbert, on the first demand for the papers, in the street, stated, in his testimony, that the papers were at the Custom House, and on a second demand, made on board the vessel, by Mr. Murray, he said they were at the Consul's office.

Lieutenant Littlehale's quotation, however, from the testimony of Captain Gilbert is not correct. He does not say in his testimony that the papers, on the first demand in the street, were at the Custom House, but he says he was asked for his manifest, and he stated the manifest was at the Custom House, and afterwards, when asked for his papers on board his vessel by Mr. Murray, he said his papers were at the Consul's house. Both of which statements were correct. But taking the statements precisely as Lieutenant Littlehales chooses to represent them, they are entirely different from a refusal to show his papers.

Waiving all right and propriety of Lieutenant Littlehales making a demand in the street, where he admits he had no authority to make it, and his refusal to assign any reason why he demanded the papers, which he clearly should have done, to entitle him to a reply anywhere, the answer of Captain

Gilbert, on both these occasions assigning a reason why he could not produce his papers, is not a refusal to deliver them.

Satisfactory papers as to the character of the vessel were at both the places named, and there is no such contradiction in the statements as shows any design to vary from the literal truth in the case, or in the least degree to embarrass the proceedings of Lieutenant Littlehales. But the testimony of Captain Gilbert does not terminate here. Lieutenant Littlehales chooses to call his reply thus far a refusal, because the papers were not delivered on the spot, and therefore he pursues his testimony no further. Captain Gilbert, however, when demand was made of him for the papers on board the vessel, by Mr. Murray, which is the only place where it is pretended a proper demand was made, not only stated to him that the papers were in the hands of Mr. Carroll, The United States' Consul, but he further told Mr. Murray, "it was then late on Saturday night, and the next day, being Sunday, there would be no business done, but on Monday he would show him all his papers, and give him every satisfaction as to his voyage and cargo." So that there was not only no refusal to deliver the papers, but a promise to produce them at the earliest possible moment on Monday.

Captain Gilbert also states that "at eight o'clock on Monday morning he took a boat and attempted to go on board his vessel, and was warned off and refused admittance. That he immediately afterwards went to the office of the Consul, took his papers, and proceeded with the supercargo, in a boat towards the vessel, but was again warned off, and threatened to be fired into, if he approached any nearer. So that the promise was not only made to produce the papers, but Captain Gilbert did all in his power to carry this promise promptly into effect, and was prevented from doing it only by threats of violence, and this statement does not rest on the testimony of Captain Gilbert alone, but he is fully sustained in these facts by the testimony of three other witnesses.

Captain Gilbert further states that the same morning, in consequence of these extraordinary and harsh proceedings, he made complaint to Mr. Carroll, the Consular Agent of The United States, representing to him these facts, and that Mr. Carroll addressed a letter to Lieutenant Littlehales on the subject, which Lieutenant Littlehales declined receiving, stating that he did not recognize him as Consul. Captain Gilbert then immediately wrote to Lieutenant Littlehales himself, but he made him no reply.

He also, on the same day, on Monday, in company with Mr. Carroll and the supercargo of the vessel, called on the collector of the port, and exhibited to the collector the register of the "Jones," the manifest of outward cargo from Boston, clearance, bill of health, and list of crew from Boston, and ship's articles, executed in Boston, and offered to give any and every information in his power relating to the barque "Jones."

Captain Gilbert testifies that the collector examined all these papers carefully, and said that he was perfectly satisfied the "Jones" was on a legal voyage, and that he would do all in his power to have the vessel released; and he immediately wrote to the commander of the "Dolphin," asking the reason of his conduct, and received no answer that day, as the collector told him, and he wrote again the next day, and in the afternoon received a few lines from the commander, in which he gave him no satisfactory answer, and assigned no reason for what he had done, and the collector then said he could do nothing more.

These facts are in no manner contested. Lieutenant Littlehales indeed says, in reply to this statement: "I received or held no communication with the Collector of Her Majesty's Customs, after having informed that gentleman, *in the early part of the seizure*, of the barque's detention." No one alleges that he held communication with the collector after giving him this information; but he had given no information of the seizure to the collector till after the papers had first been shown to the collector by Captain Gilbert, and the collector had written to Lieutenant Littlehales fully on the

subject. He then wrote a brief line to the collector, as Captain Gilbert says he did, and this is the communication had by Lieutenant Littlehales with the collector, "*in the early part of the seizure,*" to which he refers.

Captain Gilbert then addresses the Governor of the Island, asking his interference and protection, and Mr. Carroll also wrote a letter to the Colonial Secretary to the same purport. Every possible effort was thus put forth, down to the time the "Jones" was taken away to Sierra Leone, to communicate the facts in relation to the vessel.

To the lines written to the Governor and Secretary replies were received, after the barque left, that they had no control over their Majesty's naval officer.

The vessel was removed without giving to Captain Gilbert any information as to the charges against her, or any notice where she was to be taken.

Lieutenant Littlehales attempts to avoid portions of this statement, by saying that Captain Gilbert "did not offer to show him his papers at any one time." But Captain Gilbert does not so say. He states that he proceeded to his vessel, and when Mr. Murray, who had charge of her, by command of Lieutenant Littlehales, demanded his papers, he told him they were at Mr. Carroll's, but he would produce them on Monday, and on Monday, when he attempted to do it, he was prevented by being warned off, and by threats.

Lieutenant Littlehales further says, "that no threats of violence were used by persons on board the barque;" but he was not present, and could have no knowledge on the subject. He is also contradicted by five witnesses on this point.

Such is a plain statement of the facts relative to this transaction. We have given it a careful examination, and are wholly at a loss to say what course of conduct could have been pursued by Captain Gilbert that would have been more proper, or in what respect he has failed in his duty in any particular. There is clearly no ground for the charge that he was guilty of "a pertinacious and peremptory refusal to produce the ship's papers," or "of wilful misconduct, and illegal opposition to constituted authorities."

It would have been a great gratification to me, and certainly highly important, in an international point of view, if the Court of Sierra Leone, and Lords Palmerston and Aberdeen, who give this construction to Captain Gilbert's conduct, had specified what answer the captain of an American merchant vessel in port should make to Her Majesty's cruiser where his vessel has been regularly entered, and her papers are at the Custom House, and at the Consul's, as they are required by law to be.

What more the captain of such a vessel can do than to say that his papers are at these offices, and that he will produce them at the earliest possible moment, and carrying out this promise promptly by his acts, I don't know; or how such a reply can constitute a legal justification for the seizure of the vessel of a friendly nation, breaking up her voyage, dispersing her crew, removing her to a jurisdiction a thousand miles from her course, and assessing her in the costs of seizure, though most honourably acquitted, by a British Court, "from all probable cause, or suspicion of any offence," except the proper answer to constituted authorities.

While I thus consider the conduct of Captain Gilbert as free from blame, and the decision of the court in this respect as wholly erroneous, the conduct of Lieutenant Littlehales impresses me in a different light.

A controversy had arisen between Captain Gilbert and his men as to the legal effect of their shipping articles. This had been settled, after a full hearing, by The United States' Consular Agent, at St. Helena, who had full power, by the laws of The United States, to adjust such controversy, in the same manner that British Consular Agents have, by law, to adjust such controversies between British masters and seamen. Notwithstanding this decision, Lieutenant Littlehales interposed in the matter, "these seamen having come to him," as he says, "for protection and assistance, the same having been denied them by Mr. Carroll." So that, in the outset, Lieutenant Littlehales not only claims cognizance and control over Captain Gilbert and his vessel, but over the proceedings of The United States' Consular Agent.

Having thus embarked in this business, and seized the vessel while in port, because, on demand for her papers they were not delivered at once on the spot, he chooses to consider it an absolute and wilful refusal to exhibit them, he prohibits all access of Captain Gilbert to the vessel, refuses to receive any explanation from him or his friends, or to give any information as to his grounds for seizing the vessel, or the course he designed to pursue in relation to her. These acts furnish to us no favourable example of official conduct or character.

Mr. Carroll was appointed as Consul of The United States, and was recognized as such on the 15th of February, 1833, by the Court of Directors of the East India Company, who were at that time competent agents for that purpose under the British Government, and held the Island of Saint Helena as a portion of their territories. From that period, for seven years up to the time of the seizure of the "Jones," he had been uniformly recognized and treated as Consul by the British authorities.

A British Consul, by the regulations of the British Government, is an officer who would outrank Lieutenant Littlehales, and on whom he is required to wait immediately on arriving in port. An American Consul holds a similar position as regards American officers. Common courtesy would require that Lieutenant Littlehales should have received from any individual of respectable character such communication as Captain Gilbert desired to make as to his vessel; but, notwithstanding Mr. Carroll was entitled to consideration in every respect as a man and a British citizen, as well as from his position of holding an appointment from The United States, his letter on this occasion was returned unopened, and all aid from him was denied by Lieutenant Littlehales.

Captain Gilbert seems to have been very unfortunately situated. When called upon for his papers, his precise form of reply, though he offers to produce them at the earliest possible moment, is regarded as opposition to authorities; if he goes to his vessel to deliver his papers he is threatened to be shot at; if he writes a letter to Lieutenant

Littlehales he receives no answer; if he gets the American Consul to write for him his letter is returned unopened, because, though previously acknowledged by competent British authorities for seven years, it is now said he has no *exequatur;* if he gets the Collector of Customs to write, Lieutenant Littlehales tells him he has seized the vessel, and the collector says he can go no further; if he applies to the Governor and Secretary he is informed they have no power over the Commander of Her Majesty's armed vessel; if he applies, as a last resort, to his Government for redress, it is held to be an improper appeal from the jurisdiction of British courts, "whose duty," it is said by Lord Palmerston, "it was, if circumstances required it, to give the claimant full indemnity," and that Captain Gilbert "had *no right* to call for the interposition of the State to do that which he might, *by ordinary care and diligence*, have done for himself" through the aid of such tribunals.

And this is said when a commander of Her Majesty's cruiser has expelled the captain from his vessel, refused all specification of charge against her, and taken her away to a coast no one knew where, except by hearsay, that the captain of a vessel, under such circumstances, not knowing where to follow his vessel, and deprived of all means of following it, might, "by the exercise of ordinary care and diligence," have reached Sierra Leone from St. Helena in season to have taken cognizance of a notice posted up, for fourteen days, "on the public wharf of Free Town," that the vessel would be "condemned, unless the owners appeared, and showed just cause to the contrary."

Such reproach, addressed to Captain Gilbert in the distressed condition in which he was left at St. Helena, would have probably seemed to him an unnecessary addition to the wrongs already received, and it seems to me to be a harsh application of the rule of due diligence in the mouth of one who has taken away from an innocent party all means of its exercise.

Had the seizure of the "Jones" been made at sea, and Lieutenant Littlehales had expelled Captain Gilbert from the

vessel on some distant coast, the outrage would have been too great to have been tolerated, but in this case it is practically as bad.

Lieutenant Littlehales should have promptly furnished his charges against the vessel; should have been ready to receive, from any respectable source, any and every information in relation to her. He should have notified Captain Gilbert of his intention to take the vessel to Sierra Leone, and furnished him the facilities of his vessel to have gone there. His conduct in all these respects has been the reverse.

But the wrongs to these owners do not terminate here. When the decision was rendered against the captors, the absurd charge of a resistance to authorities was made to prejudice the vessel, and an appeal was also taken from the decision of the court, and bonds were filed.

The appeal was never prosecuted. The ordinary effect of an appeal, however, is to hold custody of the property seized for the further term of one year. The hands of the court are not indeed tied up by such an appeal until the service of an inhibition upon it, obtained from the higher court; but whether any intermediate steps in the meantime shall be taken, depends, under the particular circumstances of the case, on the discretion of the court. The ordinary practice, however, is to defer to an appeal, certainly till a reasonable time be had to obtain an inhibition, which would have required a number of months in this case for the proper application to the higher court. It is an established principle, also, of Courts of Admiralty, that where there is an appeal, the property in question cannot be withdrawn, but upon security given for the value. The *Woodbridge*, 1 *Hagg*, 76. Proceedings were thus stayed, and the case rendered still more difficult and complicated.

A yet further wrong was done by Lieutenant Littlehales. The regulations of the British service, as we learn from a letter of Lord Aberdeen to Mr. Everett, December 29, 1841, "require all cruisers, under the several Acts for the suppression of the Slave Trade, to enter, on their log-book,

all particulars relating to the seizure of all vessels for the violations of those Acts, and that a full statement of these particulars should be sent, by *the first opportunity*, to England."

No such return was, for a long period, made by Lieutenant Littlehales. The two volumes submitted to Parliament, purporting to be a list of vessels detained and captured by Her Majesty's cruisers employed for the suppression of the Slave Trade, published succeeding this date, covering a period of some years, contain no report of the seizure of the "Jones." So that Lieutenant Littlehales has failed in his duty as an officer of the British Government, in not complying with orders, important to the interests of these parties, and to the protection of the commerce of The United States.

Lieutenant Littlehales had all the means of knowledge before him that was subsequently possessed by the court of Sierra Leone. He was bound to come to the same just and impartial decision as to the character of the vessel, and the want of all probable ground of her connection with the Slave Trade. By his hasty and ill-judged proceedings, and relying on trivial circumstances, and vague surmises of no weight to an unprejudiced mind, contrasted with known facts before him, he has been guilty of a wrong against unoffending citizens of The United States, that has ruined their pecuniary prospects, and has caused an imbittered state of feeling between the two countries in reference to his acts.

The course of the British Government also, not only in not affording redress in this matter, but in delaying prompt inquiry and investigation, and in not holding its officers and tribunals responsible for the enforcement of their own laws and rules, important to the protection of American commerce, is a ground of grave and serious complaint by the parties in this case.

Both the 5 George IV and the 2 and 3 Victoria, as amended, require the Vice-Admiralty Courts on the first Monday of January and July of each year, to report to Her Majesty's Commissioners of the Treasury, all cases which

have been adjudged in the court for the six months preceding. These returns are to give "the date of seizure; the property seized; the name of the seizor; the sentence, whether of forfeiture or restitution; whether the property has been sold or converted, and whether any part remains unsold; and in whose hands the proceeds remain."

When it has answered the occasion of the British Government to represent its regard for the rights of American commerce, the provisions of law as to immediate returns, and the particular and cautious instructions to their cruisers on this subject, are pointed to as proof of their prompt watchfulness over every invasion of the American [illegible]. But here, where these provisions have been wholly disregarded, we have yet to learn that there has been a word of reproof to these officers; and through the whole correspondence on this subject there has been no explanation, palliation, or apology on this account, but these provisions of law have been permitted to remain a dead letter.

And this has greatly prejudiced the interests of these parties. Captain Gilbert returned from St. Helena, at the earliest possible moment, to his employers, to represent the facts as to the "Jones," and the American Consul at St. Helena sent immediately to his Government an account of the seizure of the vessel, and the circumstances in relation to it. Representations were at once made in London to the British Government, by Mr. Stevenson, the American Minister, and until some answer could be had on his application, indicating the determination and disposition of the British Government in relation to the claim, no other course seemed advisable, or proper by the owners of the vessel.

The case was one requiring urgent and prompt action on the part of the British Government, so that, if the proceedings of Lieutenant Littlehales were not disavowed, any other less adequate remedy the case might admit of might be resorted to in season, to retrieve the owners of the vessel from destructive loss.

The communication from Mr. Stevenson to Lord Palmerston on the subject was on the 16th of April, 1841, five

months after the adjudication at Sierra Leone. But it appears, from the correspondence in the case, that no inquiry was instituted in reference to it for more than four months after that time; and though the attention of the British Government was repeatedly and earnestly called to this subject, as late as October 5, 1842, Lord Aberdeen, in reply to a letter from Mr. Everett, in relation to the "Jones," states that, "from the want of the proceedings at Sierra Leone, Her Majesty's Government have been unable yet to come to a decision in the case, and that a renewed application has this day been made to the proper department on the subject, and that, so soon as Her Majesty's Government shall have received the necessary information, he will lose no time in communicating to Mr. Everett the decision of Her Majesty's Government in the case."

Five months after this time, on the 2nd of March, 1843, and *more than two years after the adjudication at Sierra Leone*, the first information is given "of the decision of Her Majesty's Government," and of the grounds on which the justification of the seizure of this vessel, and of the conduct of Lieutenant Littlehales, is placed.

During all this time the owners of the "Jones" were kept in entire suspense as to what course would be adopted, and the vessel and cargo had been long before this sold, by order of court, at a ruinous sacrifice.

To the communication, giving the decision of Her Majesty's Government, received after a delay of such extraordinary duration, and against which delay Mr. Everett strenuously remonstrates, a full and elaborate reply was drawn up by Mr. Everett on the 18th of May, 1843. In this reply he presented the views of his Government, and his comments on the evidence and grounds taken by Her Majesty's Ministers, and earnestly asked Lord Aberdeen's attention to the statements and grounds submitted to him, representing "the transaction on which it had been his painful duty to dwell, as extraordinary and oppressive in all its parts," and that a denial of reparation "would produce a degree of discontent on the part of the Government and

people of The United States of a character greatly to be deprecated."

To this urgent letter, to which the attention of the British Government was again called by Mr. Everett in June 1846, no reply was made by the British Government for more than *three and a half years*, when Mr. Bancroft November 26, 1846, addressed a letter to Lord Palmerston in reference to the unanswered letter of Mr. Everett of May 1843, stating "that he was *instructed* by his Government to ask an early and definite reply."

A reply was then made early in the ensuing month, which was responded to by Mr. Bancroft, and which was again replied to by Lord Palmerston, in which he sets up the closest technical ground and objections to the claim of the owners of the "Jones," and alleges that they had had "ample opportunities to assert their rights, either in the court below, or by an appeal from the decision of that court to the Judicial Committee of Her Majesty's Privy Council," and denying to them all other remedy.

In March 1848, this whole subject and the correspondence in relation to it, was communicated to Congress, and was passed upon by a very intelligent committee, who unanimously reported, through Mr. Marsh, of Vermont, their chairman, "that the Government of The United States was under a solemn obligation to protect the citizens of the Union, at whatever hazard, in the exercise of their lawful callings in their commerce with foreign nations, and that, in the deliberate judgment of the committee, the case of the 'Jones' was one of the strongest in which the American Government had ever been called upon to discharge that obligation. That in the history of our intercourse with civilized nations they knew few instances of more wanton and unprovoked outrage than this case exhibited, and that they believed the honour and interest of the nation demanded that the Government should insist upon the most full and ample pecuniary redress to the owners of the vessel, if not upon reparation for the indignity to the American flag by the condign punishment of the offender, and that it was the duty

of the Government of The United States to renew the demand for redress to the owners of the 'Jones,' and strenuously urge the same."

From the proceedings in this and other cases this Commission ultimately originated, by which it has been proposed to settle equitably and justly all outstanding claims between the Governments accruing since 1814.

The case is, therefore, now submitted to this tribunal under circumstances, after this long delay and hardship to these parties, entitling it to great deliberation and consideration. It has been fully argued. I have given the most attentive consideration to every suggestion that has been urged in defence of these proceedings, with a desire to regard equally the rights and interests of the two Governments as an arbiter between them, bound by every consideration, as well as the explicit declaration subscribed by me, to decide all matters submitted to our decision, "to the best of my judgment, without fear, favour, or affection to my own country."

After such examination I have arrived at the conviction, that the complaint made by the owners of the "Jones" is fully sustained; that the wrong done to them has been characterized, in its initiation, and in almost every step of its progress, by oppressive acts wholly uncalled for in the circumstances of the case; that the seizure of the vessel was without just cause; that its detention, on the charge of being concerned in the Slave Trade, had no probable ground to sustain it; that its removal to Sierra Leone, for trial, was in violation of just rights of these parties, and of settled principles of English law; that the charge against Captain Gilbert "of wilful misconduct and opposition to constituted authorities," had nothing to justify its connection with charges against the vessel, and are wholly unfounded in fact; that the delay and neglect of the British Government in looking into the circumstances of the case, after most earnest remonstrances of The United States had been repeatedly made to them, is without excuse, and has greatly prejudiced the just rights of these claimants; and that the owners of the

"Jones" are entitled to full compensation against Lieutenant Littlehales, and the British Government, who have throughout justified, and sustained him as their agent, for all injury which has, directly or indirectly, arisen from these wrongs, and for the unjust delay of reparation of them to the present time.

In coming to this result it is, with deep regret, I find I have not the full concurrence of my associate Commissioner as to the extent of redress these claimants are entitled to, and that this long litigated controversy must remain unadjusted to abide the final decision of the umpire appointed under this Commission to whom it is now ordered to be committed.

MR. BATES, Umpire:

London, November 29, 1854.

The umpire reports that in his judgment there is due from the Government of Great Britain to the owners of the barque "Jones," or their legal representatives, the sum of ninety-six thousand seven hundred and twenty dollars; to the supercargo Sexton, the sum of twelve hundred dollars; to James Gilbert the master, the sum of eighteen hundred and sixty-three dollars; to Ebenezer Symonds the mate, the sum of eight hundred and forty-two dollars; together one hundred thousand six hundred and twenty-five dollars, or, at the exchange of four dollars eighty-five cents per pound sterling, twenty thousand seven hundred and forty-seven pounds eight shillings and fivepence, the British Government retaining the proceeds of the sales of the brig and cargo at Sierra Leone, and the silver coin now in the possession of the Vice-Admiralty Court at that place.

JOSHUA BATES, *Umpire.*

Florida Bonds—(Holford.)

Mr. Hornby, British Commissioner:

This claim of the executors of the late Mr. Holford, a subject of Her Britannic Majesty, and formerly resident in London, upon the Government of The United States, in respect of certain bonds issued to him by the Republic of Texas prior to its annexation, arises under the following circumstances.

In the year 1838 the Republic of Texas, which had only recently separated itself from Mexico, was still engaged in carrying on the war with that country. The independence of Texas had not at that time being acknowledged by any Government but that of The United States. The resources of the young Republic were slight, and the result of the war was doubtful. In this state of things it became of the utmost importance to the Texan Government to obtain funds to establish an efficient naval force, to prevent its ports from being blockaded and to operate upon the enemy's coast. Two Commissioners, Mr. Samuel M. Williams, and Mr. A. T. Burnley, were therefore sent to New York in October, 1838, with authority to negotiate a loan for the Republic of Texas.

These gentlemen, it appears, found considerable difficulty in executing their mission, until General Hamilton, of South Carolina, who had taken a very active part in the war, introduced them to the late Mr. Holford, who, at the request of the Commissioners and General Hamilton, agreed to advance a sum of money for the purchase of a steam-vessel then lying in the port of Philadelphia, called the "Charleston," to have her brought round to New York, to be there altered,

and armed as a vessel of war, and furnished with necessary stores, and then to send her at his own risk to Galveston, to be offered to the Texan Government.

The terms upon which Mr. Holford consented to render this important service to the Republic were embodied in the following agreement :—

Articles of Agreement* entered into in the City and State of New York this 24th day of October, 1838, between General James Hamilton, of South Carolina, as the authorized agent of James Holford, of London, of the first part, and A. T. Burnley and Samuel M. Williams, as Commissioners authorized by the Republic of Texas, to negotiate a loan of money for the said Republic, under the provisions of an Act passed by the Congress of Texas, the 16th May, 1838, of the second part, witnesseth,

That the said party, of the first part, binds and obliges himself to purchase the steamer "Charleston," now lying at Philadelphia (in the name of the said Hamilton), provided the said boat can be purchased for a sum not to exceed thirty thousand dollars.

The party of the first part further binds himself to have the said boat repaired, fitted out, provisioned, &c., under the management and direction of Samuel M. Williams, naval agent, of Texas, and to deliver her with all convenient dispatch at Galveston, in Texas ; the whole expense of which, including all charges and expenses up to the time of her delivery at Galveston, not to exceed seventy thousand dollars. And when delivered in Texas, the said boat, her provisions, munitions, &c., to be offered to the Government of Texas for their bond for double the amount of the cost of the boat and expenses incurred up to the time of her delivery at Galveston, payable *in five years* from date, at the Bank of The United States, in Philadelphia, or in London, at such agency as Texas may engage in that city. The said bond to bear an interest of ten per cent, payable semi-annually.

But inasmuch as the Commissioners, to negotiate a loan

* Agreement, 24th October, 1838.

of money have no authority to contract for the purchase of a steam-boat, although they believe the Government of Texas would be much pleased to purchase the steam-boat "Charleston," when fitted out as contemplated on the terms herein mentioned, and will do all they can to induce the Government to make the said purchase; yet as the Government will not be *bound* to do so, and may *not* do so, therefore if they do not, as a compensation for the risk which the party of the first part is compelled to run of having the said boat, her provisions, munitions, &c., left on his hands, when he does not desire to hold such property, the parties of the second part bind themselves, as they have authority to do, to issue two bonds of the Republic of Texas, to James Hamilton, or order, *payble in five years* from date in the Bank of The United States in Philadelphia, bearing an interest of ten per cent payable semi-annually, the two together to be for a sum double the amount of the cost and expenses of said boat when delivered at Galveston; which bonds shall be forthwith executed in blank, and deposited with N. Biddle, Esq., President of The United States' Bank, at Philadelphia, who shall be directed and requested to fill up the date and amount as he may hereafter be directed by the joint written request of William Brancker, of New York, and either of the aforesaid Commissioners, after they shall have ascertained the cost and expenses of the boat up to the time of her delivery at Galveston, and that the Government declines to take the said boat; which said bonds, when so filled up, Mr. Biddle shall be directed to deliver to General James Hamilton or his order (at any time before the 1st day of March next), whenever he shall deposit in the Bank of The United States at Philadelphia to the credit of the Government of Texas, half the amount of the face of the said two bonds.

The parties of the second part further bind themselves, if applied to before the 1st of March next, to substitute in place of the two bonds mentioned above, two such sterling bonds with the necessary coupons as we may be authorized to issue, under the laws of Texas, and for similar amounts.

In testimony of all which the parties of the first and second parts have hereunto subscribed their names and affixed their seals at the date first above written.

(Signed) J. HAMILTON, (L. S.)
Authorized Agent of James Holford.
A. T. BURNLEY (L. S.)
SAMUEL M. WILLIAMS (L. S.)

The stipulations of this Agreement were completely fulfilled by Mr. Holford. The "Charleston" was purchased, fully equipped, and sent to Galveston, to be accepted on the terms of the contract by the Texan Government, if it should think fit to do so.

As was anticipated by the Commissioners, the acquisition of the "Charleston" on these terms was deemed highly advantageous by the Texan Government. A receipt for the vessel and her appurtenances was given under date of the 23rd of March, 1839; and an Act of Congress was passed on 10th January, 1839, for the special purpose of confirming the contract which the Commissioners had entered into.

In recognition also of the value of Mr. Holford's assistance, it was further "Resolved by the Senate of the Republic of Texas in Congress assembled, that as a manifestation of the sense entertained by this body of the very liberal and friendly conduct of Mr. James Holford, of Great Britain, in the advance of funds for the purchase of the steamer 'Charleston,' that the thanks of Congress be, and are hereby, tendered to Mr. James Holford, and also that the Honourable Secretary of the Navy be requested, should Mr. Holford visit this country, to extend towards him on his arrival a cordial welcome to our shores."

Nothing then remained to be done but to ascertain the amount to which Mr. Holford was entitled under the contract; and accordingly two persons were appointed by the Texan Government to audit the accounts relating to the purchase of the "Charleston."

These persons, on the 24th June, 1839, reported that the total amount of the actual cost and expenses paid by Mr. Holford in respect of the "Charleston" was 90,014 dols. 84 cents.

According to the terms of the agreement, therefore, coupled with the instructions of the 20th March, 1839, Mr. Holford became entitled to receive a bond from the Government of Texas for the sum of 180,028 dols., payable in five years, with ten per cent interest. The Government, however, did not strictly comply with the conditions of the contract as to the mode of payment, but gave Mr. Holford 226 bonds, each for 100*l.*, equal to 22,600*l.*; and 31 bonds, each for 250*l.*, equal to 7,550*l.*: all of them dated the 1st July, 1839.

These bonds were in the following form:—

REPUBLIC OF TEXAS, NORTH AMERICA.

Ten per cent loan for five million of dollars, with an annual accumulating sinking fund of 300,000 *dols.*

The Republic of Texas hereby promises to pay to the bearer the sum of two hundred and fifty pounds sterling, bearing an interest of ten per cent per annum, payable semi-annually, on the first days of January and July, at

, on the delivery of the proper dividend warrants in the margin hereof. *The faith and revenues of the Republic are solemnly pledged* for the payment of the interest and principal of this loan, according to the several Acts of the Congress of Texas, passed the 18th November, 1836, and the 15th May, 1838. And there is, moreover, specially pledged for the same purpose, by an Act of Congress passed 22nd January, 1839, the sum of three hundred thousand dollars, to be reserved annually out of the sales of the public lands as a permanent and accumulating sinking fund, until the whole loan has been paid off. And in case this bond has not been previously redeemed with the consent of the holder by the operation of the said sinking fund, the Republic of Texas undertakes and promises that it shall be finally paid,

together with the interest due thereon, at the expiration of thirty years from this date at the above.

The holder of this bond is moreover entitled to the privilege at any time of transferring the same, with the interest due thereon, at the Land Office of the Republic of Texas, in payment of such Government lands as may be purchased by him or his assignee at public or private sale, at the minimum Government price.

In testimony whereof, the President of Texas has, by his Commissioners, signed these presents, and the Minister of the Republic of Texas to The United States at Washington has countersigned the same, after the seal of the Republic has been hereunto affixed, at Philadelphia, this 1st day of July, 1839.

(Signed) M. B. LAMAR,
President of the Republic of Texas.

(By, signed) J. HAMILTON,
A. T. BURNLEY,
Commissioners.

(Signed) R. G. DUNLAP,
Minister of The Republic of Texas to The United States at Washington.

No interest, it is alleged, has been paid on any of these bonds, and Mr. Holford has never received payment of any portion of the debt thus due to him from the Texan Government.

I pause here for a moment to consider the position of Mr. Holford with reference to the independent Republic of Texas at this stage of the case. He had advanced his money on the faith of an agreement entered into with the authorized agents of the Texan Government under the provisions of an Act of the Republic of the 16th of May, 1838, which stipulates that all the revenues of Texas should be pledged for the purpose of liquidating any loan or contract they should make, which agreement was subsequently ratified by an Act of the 10th of January, 1839; and in accordance with the stipulation referred to he received bonds specifically pledging

the revenues and faith of Texas for their faithful redemption; so that, beyond the guarantee and general obligation to pay contained in the agreement, and the laws of the 16th of May, 1838, and the 10th of January, 1839, Mr. Holford had the revenues of the Republic solemnly pledged to him by way of mortgage for the payment of the debt created in the manner I have already detailed. The legal liability of Texas, immediately preceding its admission as a State of the Union, to pay the debt incurred to Mr. Holford, was complete. I do not understand that it is denied. But an argument has been preferred with the view of showing that so long as *any* source of revenue, or any means of satisfying the obligations thus entered into remained to Texas, The United States' Government are not under any circumstances liable. To this I shall have occasion to refer hereafter.

In 1845 Texas ceased to be an independent Republic, and was admitted to the Union as one of the United States, and the whole of the revenues of Texas arising from duties on imports, together with the navy, &c. &c., were transferred, in accordance with the provisions of the Constitution of The United States, to the Federal Government.

By a subsequent Act of Congress (Sept. 9, 1850), which, as between The United States and Texas after she had become one of the States of the Union, settled her boundaries,—in consideration of certain concessions of large portions of the public lands by the State of Texas, and other things, it is provided "that The United States should pay to the State of Texas the sum of ten millions of dollars, or a stock bearing five per cent interest." In this Act, however, there was inserted a proviso to the following effect:—"That no more than five millions of the said stock should be issued until the creditors of the State, holding bonds and other certificates of the stock of Texas, *for which duties or imports were specially pledged,* should first file at the Treasury of The United States releases of all claims against The United States for or on account of said bonds or certificates, in such form as should be prescribed by the Secretary of the Treasury, and approved by the President of The United States."

Thus it appears that five millions of the money to be paid to Texas was actually retained and attached in the hands of the President, to meet the acknowledged liability which the Government of The United States had incurred by admitting the New State into the Union, and taking from it the principal fund (viz. the import duties) out of which the debts were to be satisfied.

Notwithstanding, however, the evident object of this proviso, and the meaning which The United States have attached to it, as evidenced by the withholding of the five million dollars, an argument has been advanced to the effect that, inasmuch as the special pledge is of *all* the revenues of the territory, the duty on imports thus transferred to The United States (although one of them, and indeed the most important and profitable) was not specially pledged for the payment of this debt, so as to bring it within the proviso. Thus Texas argued when it sought to induce the Government of The United States to abandon its lien on, and to pay out, the five millions retained to meet the creditors having a special pledge of the duties on imports. In answer to this argument, however, the Executive of The United States very properly showed that a *special* pledge of *all* the revenues necessarily included every one of them, and operated as a special pledge of each particular branch, the same as if each by name had been specially appropriated. Mr. Secretary Corwin, in his official report, explains the true meaning of the proviso. "It seems perfectly clear," says he, "that a pledge of 'all the revenue' of a Government whose organic form admitted the power to raise revenue by 'duties on imports,' is a special pledge of duties on imports as well as all the other sources of taxation known to such Government. If, instead of a pledge of the 'revenues'—a term comprehending every item of the revenue—another form of expression had been adopted, which had enumerated each item, including duties on imports, then no one would doubt that the law contained a special pledge of the duties on imports."

"If then the pledge of all 'revenue,' without enumeration

of items or classes, does not include duty on imports, neither does it, for the same reason, include any other species of revenue; and thus it would follow, that nothing was pledged by the Act in question—an absurdity too flagrant for consideration. Such a construction would admit the possibility of an intention by the Congress of Texas to hold out to the world a delusive promise, seeming to be substantial, and yet, in fact, offering no real security. The section referred to, therefore, must be considered as pledging specially the duties on imports, as any other species of revenue possible under the Government then existing. If these views are correct, all loans negotiated by Texas prior to the 14th January, 1840, and under that Act, are secured by a special pledge of the duties on imports."

A similar opinion appears to have been expressed by Mr. Cushing, the present Attorney-General of The United States, upon the same point being referred to him by the Executive. He says, "It has been suggested that the pledge of 'all the revenues' does not come up to the condition of the Act of Congress, for which duties on imports were specially pledged. I feel constrained, however, to agree fully with the reasoning of Mr. Corwin as to this point. *Omne majus in se minus continet:* the whole includes all the parts. *If a pledge of all revenues be not a pledge of duties on imports, then it is no pledge of anything; for you may strike out* from its province each and every species comprehended in the genus 'revenue,' by force of the same reasoning which strikes out duties on imports, and the effect would be to annul and altogether defeat the whole purpose of the lawgiver."

After these opinions, assented to as they have been by the Executive of The United States, it surely does not now lie in the mouth of the latter to urge, in support of its non-liability to pay the bondholders, the same argument which they combated and disallowed when advanced to induce them to pay over the remaining five millions due to Texas, but specially retained to answer these very claims. I refuse, therefore, to believe that this suggestion, with reference to this general pledge of all the revenues not being within the

scope of the proviso of the Act of Congress of the 9th of of September, 1850, if seriously made, is made with the sanction or support of the Government of The United States.

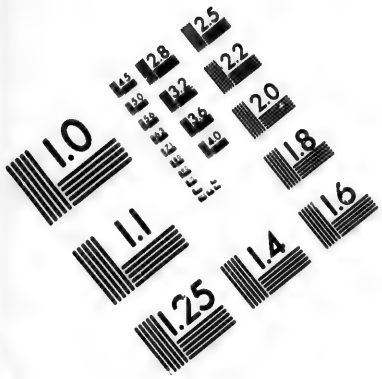
On the contrary, I find that this liability *has never been denied by the Government of The United States*. So far as I have had the means afforded me of knowing anything about the proceedings of the Executive of The United States in reference to this claim, the non-obligation to pay this debt is *now, for the first time*, asserted by the learned Agent of The United States on behalf of his Government. Before entering upon the consideration of the arguments which he has thought it within the sphere of his duty to address to the Commissioners, I must express my regret that I have not been favoured by my colleague with the reasons which weigh upon his mind, and induce him to differ in opinion with me on the justice of this claim; but as he has not expressed dissent from the arguments advanced by the learned Agent, I am constrained against my will to consider that *he also* attaches weight to them, and it thus becomes my duty to give them that consideration to which, under other circumstances, I frankly confess, I should not conceive them to be entitled. These arguments are put in the form of a protest against the Commissioners' assuming jurisdiction of any claim made on The United States arising out of bonds issued by the Republic of Texas. The first paragraph in that protest asserts that this claim is in no sense "embraced or contemplated by the Convention of the 8th of February, 1853." Why or wherefore, however, I am utterly at a loss to imagine; and the learned Agent has not offered us any arguments to show how these claims can be excluded from our consideration.

It is perfectly clear, from the language of the first section of the Convention under which this Commission is constituted, *that we are bound* to entertain it. It is the claim, as appears by the memorial, of a subject of Her Britannic Majesty, upon the Government of The United States. It

has been presented to the Government of Her Britannic Majesty, for its interposition with the Government of The United States, and it has also been presented within the time specified by the third article. This is all that is requisite to give us jurisdiction; and having jurisdiction, we cannot allow the apprehension of "surprise" or possible but highly improbable "excitement," which the American Agent fears will be excited in The United States, to deter us from entering upon its consideration, and deciding it, "according to justice and equity, and without fear, favour, or affection to either country."

So much then for the first reason. I come now to the second and third, which are stated with equal confidence, and have reference to certain resolutions passed by Congress, and assented to by Texas on the admission of the latter into the Union as a State, and which declare that "in no event are the debts and liabilities of Texas to become a charge upon the Government of The United States." It is impossible, however, not to see, that, however binding as between Texas and The United States this resolution may be, and however much it may give a right to The United States to insist upon Texas ultimately indemnifying her for any debts which Texas had contracted, and for which The United States might be liable, and, being liable, might be called upon to pay, it cannot in the least affect the rights of any creditor of Texas to follow his pledge, and attach it wherever he can find it, no matter to whom it may have been conveyed, or under what conditions. That this is so beyond all doubt, a very little consideration of the position of all mortgagees will sufficiently show; and Mr. Holford stands precisely in the relation of a mortgagee to the revenues pledged to him. The rule of law is of the most elementary kind, that when once any property—as, for instance, a piece of land, a house, or a fund—is charged with the payment of a debt, anybody purchasing or otherwise coming into possession of the thing so charged takes it *cum onere*, that is, with the burden upon it, or subject to the obligation of paying the debt out of it.

Mr. Cushing, The United States' Attorney-General, to whose opinion I have already referred, thus clearly and concisely expresses himself on this point:—"A public creditor, says he, "like a private creditor, has a general right to receive payment out of the property of his debtor. A special pledge of this or that source of revenue, of this or that direct tax, or indirect tax, when made by a Government, renders such source of revenue like a mortgage, or deed of trust given by a private individual to his creditors: a specific lien or fixed encumbrance which the Government ought not, in justice to the creditors, to abolish, lessen, or alienate until the debt has been satisfied. But a public debtor, like a private one, even as to debts secured by hypothecation of specific property, or other express lien, ought not to deprive himself of the means of payment, as the two Governments, that of Texas and of The United States, abundantly indicated, as well by the compact of annexation as by that for the change of boundaries." If The United States, as between itself and Texas, without reference to the creditor, enters into an agreement by which the latter transfers from herself her right to collect these duties, and vests the right exclusively in The United States, can it be said that The United States are justified in holding the fund so pledged, or in refusing to pay the creditor who trusted Texas on the faith of the security antecedently pledged to him? It is precisely the case of a mortgagee of real or personal property. The mortgagor contracts debts afterwards, and mortgages again, or transfers by sale or otherwise, the property mortgaged to a person, with or without notice. In such a case, it is clear that the second mortgagee could not hold the fund discharged from the encumbrance upon, nor could the subsequent creditor claim to be paid out of the fund irrespective of, the first mortgage. If there were therefore nothing else except the mere existence of the contract, followed by the subsequent appropriation by The United States, under the subsequent contract between herself and Texas, of the fund pledged, The United States would be responsible for the entire value of the pledged property and for the value of the entire debt.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It is so obvious that no agreement entered into by a debtor with a third person, that that third person should take a property the subject of a specific charge free from all liability to the person having the charge, can be binding on, or in any way affect the rights of the individual to whom the property is pledged, that further argument to prove so elementary a proposition would be useless. It is evident therefore that the resolution assented to by Texas, declaring that The United States shall not be answerable for the debts of Texas, can in no way legally or morally affect the claim of Mr. Holford on The United States.

I pass on to the fourth objection against the entertainment of this claim by the Commissioners, which is thus stated:—

"IV. Because it is not true, as asserted in the statement of the claim presented to the Commissioners, that Texas is incorporated into and subjected to the dominion of The United States' Government, so as to destroy her responsibility for her debts contracted while an independent Republic, or her ability to meet them; but, on the contrary, she is, for the purpose of fulfilling these obligations, as clearly responsible by the law of nations, by her separate and distinct society, and by her solemn agreement with The United States, as she ever was, and fully able to discharge them; and this Commission is not authorized to interfere, to shift any such obligation from Texas upon The United States."

It is difficult to see how the objection bears upon, or what connection the reasoning involved in it has to the facts of the claim before the Commissioners. The obligation of Texas to pay her debts is not in dispute, nor has it been argued that the mere act of her annexation to The United States has transferred her liabilities to the Federal Government; though certainly, as regards foreign Governments, The United States is now bound to see that the obligations of Texas are fulfilled. It is the transfer of the integral revenue of Texas to the Federal Government, that is relied on as creating the new liability. The shifting of the obli-

gation, which the learned Agent of The United States warns the Commissioners they have no authority to effect, is *in fact* already effected by The United States itself.

Again, I will have recourse to the language of the Secretary of The United States, adopted by the President himself, as the best expression of the proposition which The United States' Agent now thinks himself justified in protesting against.

"It is obvious," writes Mr. Corwin, "from the most careless perusal of the law, that *Congress considered The United States as liable to pay all that portion of the debt of Texas for the redemption of which 'duties on imports' had been pledged by the law of Texas.*"

Upon no other hypothesis is there any justifiable motive for requiring releases to The United States to be filed for such claims before Texas should receive the last five millions of the stock to be paid her. In other words, Congress admitted the liability of the general Government to pay all that portion of the public debt of Texas, and laid its hands upon five millions of the stock provided for, as a security that Texas should pay that portion of her debt; or, in her failure to do so, the five millions thus withheld should be a fund out of which that class of the creditors of both Texas and The United States should be paid in whole or in part, as the relative amount of such debt and the fund reserved should determine.

The history of the debt contracted by Texas while she was yet an independent power, and her subsequent incorporation into the Union as a State of the Republic of The United States, it is believed, makes The United States liable for this portion of the Texas debt.

The laws of nations which govern the subject are well understood, and of easy application to the present question. These laws all proceed upon the idea that the moral obligations of independent states are binding when once they attach to compacts between states, or between states and individuals, and that they never cease except by the voluntary agreement of the parties interested, or by their fulfilment

and complete discharge. Hence, where an independent power contracts obligations, and is afterwards, by the act of another power jointly with herself, incorporated into and subjected to the dominion of the latter, whereby the national responsibility of the former is destroyed, and the means of fulfilling her obligations transferred to the latter, all such obligations, to the extent at least of the means thus transferred, attach with all their force to the nation to whom such means have been so transferred.

It will be found that all writers on public law, having any authority, are agreed upon this point, from the time of Grotius to the present. Indeed, the proposition thus asserted is so obviously just, that it is not possible for a nation in modern times to controvert it without forfeiting that character for justice and probity which, happily for mankind, has become indispensable for sovereign States. It was this view of the subject which doubtless dictated that provision of the law of which I am now considering.

It was known to Congress that Texas had contracted debts to a large amount to individuals while she was an independent power. It was equally well known that revenue arising from "duties on imports" was amongst all nations in modern times one resource, if not the principal one, for the payment of the debts of nations. It was known also by the framers of this Act, that by the annexation of Texas to The United States the power to levy duties on imports within the ports or territories of Texas was taken away from the latter, and transferred to The United States. It was therefore assumed that The United States should pay, if Texas did not, all that portion of the debt of Texas for which duties on imports had been pledged, for the obvious reason that these duties thus pledged were taken from Texas and transferred to The United States, and to that extent the creditors of Texas, by a plain principle of justice, had become the creditors of The United States.

But this clear and indisputable obligation of The United States, to discharge a liability which she has voluntarily taken upon herself, has not only been thus duly acknow-

ledged by the Executive of The United States; but on three different occasions—the first in 1847, the two others in 1848—The United States' Senate Committee of Claims reported in favour of the payment by The United States of this debt, and upon the express ground that the transfer of the right to levy imports which Texas had, as a sovereign Republic, at the time of her annexation to The United States, and which antecedently she had appropriated expressly to the payment of this debt, bound The United States to do one of two things—either to pay the debt, or surrender the pledge; and not being able constitutionally to do the latter, it follows, as a matter of irresistible consequence, that she is both morally and legally bound to do the former. And since this Commission was appointed, a Bill has been actually reported by the Senate for payment of such creditors of Texas as are comprehended in the Act of Congress of September, 1850, in which category Mr. Holford holds a prominent place.

Strange to say, this last fact has been made use of on this occasion in order to prove that this Commission has no right to enter upon a consideration of the case. It is said, that because Congress has taken up the subject, this Commission is ousted of its jurisdiction. If this were to be held sufficient, however, the entire jurisdiction of the Commissioners might have been ousted, and the whole object of the Convention frustrated, by each Government taking an initiatory step with respect to each important claim, the mere introduction by one section of the legislature of a Bill being considered tantamount, as against the claimants, to a final settlement of their claims.

The fifth assertion, which is the last in the protest made by the learned Agent against the Commissioners' assuming jurisdiction over the claim, is as follows:—

"Because this Commission has nothing to do with any law or act of the United States addressed to the Government or people of Texas, designed or tending to induce that State to perform her obligations entered into while an independent Republic; and hence, to take jurisdiction of this claim would

be a palpable and unwarrantable violation of the spirit and intention of the Convention, to which The United States would have a just and perfect right to take exception, as much so as if this Commission were to pass laws for the government of The United States, or do any other thing wholly without the bounds of its authority."

I suppose, for it is not very clearly stated, that it is intended to assert that the Commissioners have no right to take notice of, or draw any inference from, the first proviso in the fifth clause of the first section of the Act of Congress of the 9th of September, 1850, which says, that no more than five millions of said Stock shall be issued to Texas until the creditors of Texas, having a pledge on the duties on imports, shall file releases against The United States,—which of course they would not be likely to do until they had been paid what was due to them by some one. This proviso the learned Agent regards as merely an inducement addressed by Congress to the Government of Texas to perform her obligations; but I have yet to learn that the refusal of a debtor to pay what he owes his creditor, until that creditor shall have discharged all the debts which he owes to other people, is to be considered simply as an "inducement" to the creditor to do his duty. I cannot suppose that Congress withheld five millions on such pretext, because, if I did, I must necessarily consider that Congress, in enacting that proviso, intended to act dishonestly as regards Texas.

Certainly the "inducement" was not likely to have this effect; for it is not probable that Texas, on the assumption that she needed such inducement, would pay twelve millions of dollars (the amount of her debts for which her imports were mortgaged) in order to receive five millions from The United States.

It is clear to me, however, looking merely at the language of the proviso, and remembering the occasion of it, that Congress designed to save The United States harmless from ultimate liability, as also to protect the creditors from loss, and that this anxiety sprang from a settled conviction that The United States, having appropriated the security of the

creditors, was liable to them in respect of it; and that, being so liable, Congress was justified in providing means to indemnify The United States from loss. So far then from thinking that the Commissioners have nothing to do with this Act, I consider it is incumbent upon us to consider it carefully. To my mind it furnishes authoritative evidence, of the most conclusive description, of the very proper mode in which the Congress of The United States have considered the position of the creditors of Texas, not only with respect to the specific pledge to them of the duties on imports, but also of their position and their rights as against The United States, consequent on and subsequent to the appropriation of those duties to themselves by The United States. It follows, therefore, in my judgment, that this fifth, as also all the preceding assertions of The United States' Agent, ought not to be sustained, and that this Commission shall have full jurisdiction over the claim.

Looking also at the fact that the moneys advanced by Mr. Holford for the purposes mentioned in the agreement of the 24th October, 1848, were secured by the terms of the law of the 16th May, 1838, by a pledge of all the revenues of Texas; that the bonds so given, as a further security for the performance by Texas of that agreement, were also secured by the solemn pledge of all the revenues and public faith of Texas; that this solemn pledge of all the revenues has always been interpreted to mean, and necessarily does include, a specific pledge of the revenues derivable from imports; that this branch of revenue has passed into the possession of The United States in consequence of the admission of Texas into the Union, and is still in law and equity subject to the obligation antecedently imposed on it, notwithstanding the terms of any agreement entered into by Texas with The United States with reference to the debts of the former,—I have no hesitation in saying that my opinion is in perfect accordance with that uniformly expressed by the Executive and Legislature of The United States, to the effect that The United States, having become possessed of the public revenues of Texas pledged for the payment of the debt due to

Mr. Holford under the agreement of the 24th of October, 1838, and secured by the bonds of the 1st of July, 1849, are properly responsible for the discharge of those obligations.

In conclusion, I must again express my regret that my colleague has not favoured me with any statement of his reasons for rejecting this claim. He may possibly have arguments to urge which would have appeared to me more deserving of consideration than those which have been adopted by the American Agent; but in the absence of that assistance which my colleague might perhaps have rendered me, I must say that this claim appears to me entirely unanswered and unanswerable; and I am therefore of opinion that The United States' Government is responsible for the payment of the bonds of Texas now held by the executors of Mr. Holford, and the arrears of interest now due thereon.

MR. UPHAM, United States' Commissioner:

THIS case has been very fully and ably argued. We have refrained from limiting the discussion to the question of jurisdiction, as we preferred the case should be submitted to us for consideration in all its bearings.

To the general position taken by the counsel for the claimants, I do not feel called upon to object. There are limitations, however, to the broad ground on which they have placed the case that should not be overlooked; and there are also matters of fact relative to the position of Texas under The United States' Government, and the dealings between the two Governments in reference to the indebtedness of Texas, that should be more fully considered than they have been by them in arriving at the true measure of justice and equity involved in the claim presented.

A portion of these facts also have an important bearing on the question, whether the class of claims now submitted to us were designed to be included for adjustment under the Convention from which our powers are derived.

It may be conceded, that the claim presented is substantiated as a just debt against Texas. Some suggestion has been made as tending to throw discredit upon it, on the ground that a large bonus was given for the loan in this and other cases. It is undoubtedly true that, during the struggle for the independence of Texas, her necessities, and the uncertain nature of the controversy in which she was engaged, urged her to the contraction of loans at a great pecuniary sacrifice, and at high rates of interest. The inducements held out to obtain such loans were, however, no greater than the risk of compliance with them seemed to demand. This fact furnishes no bar to the claim in any manner, and should not limit in any considerable degree the strong grounds of equity urged for its payment.

There are other and distinct considerations, however, bearing upon the claim, as against The United States.

It is contended that The United States is rendered liable,

on the grouud that this debt was secured by a pledge of the faith and revenues of Texas, and, when the general sovereignty of Texas as a nation was transferred to The United States, (involving, as of course, power over the revenues of Texas), The United States necessarily assumed her debts, and became bound in full for their payment.

The analogy is urged that a private creditor has a right to receive payment out of the property of his debtor pledged to him, and may follow it wherever it is transferred; and that a pledge of this or that source of revenue, where made by a Government to secure its indebtedness, constitutes an incumbrance or lien upon it in like manner. Such revenue, it is contended, "cannot be alienated without transferring with it the incumbrance of the debt; and cannot be abolished or lessened till the debt is destroyed."

This analogy exists, and yet it is defective in important respects. In a case of the pledge of private property, the creditor can claim and assume the possession of it, as against others, and avail himself of it at once for what it is worth. Between individuals, this transfer of ownership and control of property may be in accordance with the highest public policy. But in such cases it should be borne in mind that the creditor does not receive his debt, he only gets the property pledged, which may be a very different matter.

In the case of a pledge of the public revenues of a State, the individual has no power to assume control over them; it would be subverting the sovereignty of the people by a claim of money. Another Government may properly receive such sovereignty and revenues, and make them a part of its own. By so doing, however, it might subject itself to a claim for the full amount of the indebtedness of such State, and yet equity would seem to bind such nation only to the fair value of the revenues pledged; and it may well be questioned whether the rights of the creditor would extend beyond such value.

It is a well settled maxim, that whoever asks equity must do equity, and if the creditor receives the full worth of a pledge, which, from the necessity of the case, he cannot

appropriate to himself, can he justly complain? It is by no means clear that any just end of private right or public good would justify a bar to international union, except on full liquidation of all such indebtedness.

Further, this case has been argued as though here was an entire absorption of one nation and its revenues by another. This is a wholly inaccurate view of the fact. Texas is still a sovereign State, with all the rights and capacities of government, except that her international relations are controlled by The United States, and she has transferred to The United States her right of duties on imports.

The revenue of a country is defined by Webster to be "the annual produce of taxes, excise, customs, duties, rents, &c., which a nation or State collects and receives into the treasury for public use. All these powers still remain to Texas, with the sole exception of the levying of duties on imports. There is no merging of one Government within the other, except to a very limited extent. It is a very different case, therefore, from the union of Ireland and Scotland with England, and other similar instances of the union of governments to which it has been likened; and is subject to a very different rule of liability, both in equity and justice.

It will hardly do to contend that a pledge of imposts, under such circumstances, ought rightfully to subject one nation to the entire debts of another, whatever that indebtedness might be, or that independent nations, while contemplating a union limited as this is, may not make the subject of indebtedness a matter of such arrangement between them as shall properly apportion this liability. If such an arrangement be made, as the creditors ought clearly, in justice and equity, to accept, it may be doubted whether a just interpretation of international law, which is based on the highest equity, would impose a greater measure of obligation.

International law must conform, in some degree, to the necessities of nations, in the same manner as the rules of private law conform to the misfortunes and necessities of individuals. I do not make these remarks as indicating a rule of adjustment that should be established between The

United States and Texas in settling these claims; nor do I mean to intimate in any manner a doubt as to the full ability of either of these Governments to fulfil any claims against them, which is a matter of very important consideration in the discussion of this subject. I merely suggest doubts whether the doctrine of the rights of the pledgor and pledgee, as maintained by the counsel in this case, can be followed out in all cases of international union, without limitations and restrictions applicable in some degree to the various states and conditions of the nations to be united.

The matter of the indebtedness of Texas was a distinct subject of agreement by the terms of The Union. According to those terms the vacant and unappropriated lands, within the limits of Texas, were to be retained by her, "and applied to the payment of the debts and liabilities of the Republic of Texas, and the residue of the lands, after discharging these debts and liabilities, was to be disposed of as the State might direct; but in no event were the debts and liabilities to become a charge upon the Government of The United States." —(*United States' Statutes at Large, vol.* 5, *p.* 798.)

The lands of Texas were thus specifically set apart for the payment of the debts of Texas, *by agreement of the two governments,* in addition to any separate pledge Texas had previously made of this class of property, for the payment of her debts.

The United States subsequently, by Act of Congress, on the 9th of September, 1850, on condition of the cession of large tracts of these lands, agreed to pay Texas ten millions of dollars, but stipulated "that five millions of dollars of this amount should be retained in The United States' Treasury until the creditors, holding bonds, for which duties on imports were specifically pledged, should file releases of all claims against The United States."—(*United States' Statutes at Large, vol.* 9, *c.* 49, *p.* 446).

It thus appears that The United States has acted from the outset in concert with Texas, in causing express provision to be made for the payment of these debts.

A difficulty early arose in carrying the law above cited

into effect, for the reason that the pledge of payment of the debts of Texas was made generally upon her revenues, and was not specific "on imposts," *eo nomine;* and for the further reason that doubts arose whether any portion of the debts could be paid, under this contract, unless the whole could be discharged.

These questions have been considered at much length by the advising officers of government, and reports have been made on the subject by Mr. Corwin, the Secretary of the Treasury, and more recently by Mr. Cushing, Attorney-General, on the 26th of September, 1853, and a bill is now pending before Congress for the better adjustment of the matters in controversy.*

The reports of these officers are confined to the proper construction of Acts of Congress, assented to by Texas, in reference to their lands and debts. It did not become necessary to discuss the question of the liability of The United States for the payment of the debts, and such discussion was expressly waived by them in considering the subject. The tendency of Mr. Cushing's opinion, so far as his views can be gathered, is to establish the liability of The United States for these debts in part. He says, however, that it "by no means follows, from the action of The United States, in providing for the payment of a portion of the debts of Texas from the proceeds of the lands, the government have *assumed* any liability thereby, or impliedly recognized any liability on their part; or that any less readiness will be shown by Texas to fulfil the engagement, in regard to her debts, contained in the compact of her admission to The Union."

I have thus recited at length the facts relating to the indebtedness of Texas by these bonds; the compact between the two Governments, in relation to this indebtedness, on the admission of Texas into The Union, and the act of Congress, and measures since had and now pending, upon the subject,

* By Act of Congress, passed February 28, 1855, 7,750,000 dollars was appropriated, subject to certain arrangements, since acceded to by Texas, for the payment of the Texan claims.—(*U. S. Statutes at Large, vol.* 10, *p.* 617.)

in order to show the position in which these claim have been regarded.

It appears, then, that at the time of The Union of these governments, and from that time to the present, including the period of the session of this Commission, the subject of these claims has been considered solely as a matter of adjustment between The United States and Texas.

The indebtedness of Texas, some years since, was conceded to be rising ten millions of dollars. Whether The United States should be liable for this indebtedness, I do not feel called upon to decide. It is clear Texas is not exonerated from the debt, and The United States has manifested a strong disposition to bring about its adjustment.

My difficulty in this case is that nothing has been shown to us bringing it within our jurisdiction, under the Convention of 1853.

There has been no evidence that claim has been made on The United States, through the agency of the British Government, for the payment of this class of debts. Moreover, it has not been the policy of the Ministers of either Government to interfere in behalf of their citizens, in the case of deferred payment of loans to other Governments; *certainly* not as between Great Britain and The United States.

This question had not been brought to the notice of either Government, or been made a matter of correspondence and difficulty between them; neither was it included in any list of unsettled claims *at the date of the Convention.*

It is clear, therefore, to my mind, for these reasons, and from the contemporaneous proceedings between The United States' Government and Texas, as to these claims, that they had not been considered matters of international controversy with Great Britain, and were not, within the intent of either contracting party, embraced among the outstanding claims to be acted upon by this Commission.

Evidence is shown that the claim has been presented at the Foreign Office, in London, since our session here, and it has been transmitted from that office to the Agent of the British Government for presentment. This could hardly be refused,

if requested, under the rule the Agents have adopted. At the same time, though it may thus be said to be brought within the letter of a clause in the Convention, it does not show it to be of the class of cases which had been acted upon, as requiring international adjudication.

We have already had before us a claim, presented in like manner, coming within the letter of the Convention, which, on full argument, we held was not within the class of cases designed to be submitted to us. I refer to the case of *William Cook and others*, citizens of The United States, who claimed to recover against the British Government a large sum in their custody realized from the sale of the effects of Mrs. Frances M. Shard, of whom they alleged they were the sole heirs. This was persisted in as a claim of citizens of The United States against the British Government.

It was a claim, however, of a character such as had never been adopted, and acted upon as a matter of international consideration, and was rejected by us as not embraced within the intent of the Convention.—(*See ante, page* 56.)

The Agent of Great Britain filed a protest in that case, which will be found in the appendix, setting forth fully the reasons why jurisdiction should not be entertained by us, many of the general grounds of which will apply to this case.

The circumstances of the two cases are different, but the decision is in point that *mere form* does not bring a claim within the jurisdiction of the Commissioners.

In my opinion, the Texas claims were not designed to be included in the Commission, but, on the other hand, would have been expressly excluded had there been any belief such an idea would have been entertained.

With such views, I must disclaim jurisdiction of the case.

Executors of Mr. Holford.

London, November 29, 1854.

The umpire reports that in his opinion the Commission cannot entertain the claim, it being for transactions with the Independent Republic of Texas, prior to its admission as a State of The United States.

JOSHUA BATES, *Umpire.*

Florida Bonds—(Philip Dawson.)

Mr. Hornby, British Commissioner:

This Claim is preferred by the representatives of the late Philip Dawson, who, in the year 1838, in partnership with his brother Frederick Dawson, carried on business as merchants in the city of Baltimore. It appears from the Memorial that both these gentlemen became bankrupts in the month of February, 1843, and that Philip Dawson, on behalf of whose representatives the claim is made, died intestate on the 17th March of the same year.

The facts out of which the claim arose are so nearly identical with those already detailed in the statement of the claim of the executors of the late Mr. Holford, that I do not consider it necessary to do more than refer to the report made by the Committe of Claims to the Senate of The United States under date of the 5th February, 1847. It is as follows:—

"That they have duly examined the statements presented in the aforesaid memorial to the consideration of Congress, and find that in the year 1838 the memorialists jointly contracted, in the name of Frederick Dawson, with the authorized agents of the Republic of Texas, to furnish said Republic with a navy, to consist of one ship, two brigs, and three schooners, with their armament and ammunition, together with clothing and four months' provision for four hundred men. These vessels were built, furnished, and equipped by the memorialists, in accordance with the terms of the contract, and were then delivered by the memorialists at the port of Galveston, where they were accepted by the agents of Texas duly authorized.

"In consideration of this satisfactory performance of the contract, on the part of the memorialists, the Government of Texas issued to them its bonds for the sum of 560,000 dollars, bearing interest at the rate of ten per cent per annum, payable half-yearly.

"The Committee find that no portion of the money represented by these bonds, principal or interest, has yet been paid. For the faithful redemption of these bonds, the interest and principal of which now amount to 1,017,333 dollars 33 cents, the revenues and public faith of the Republic of Texas were solemnly pledged. The contract which the Committee have thus described, was made and fulfilled at a very critical juncture in the history of Texas,—shortly after the recognition (in 1837) of the infant Republic by The United States, and before any other sovereign power had recognized its independence. Texas was then in a state of great depression, and in circumstances calling for the just sympathy of nations, and requiring on her part extraordinary exertions to maintain an independence then encompassed with danger. The Committee are fully persuaded that to the acquisition of the vessels of war furnished to the Government of Texas by the memorialists, the struggling republic was mainly indebted for her security during that critical period, and her subsequent recognition by Great Britain and France. Her little navy secured the safety of her coast, inspired with fresh confidence her Government and people, and gave her additional consequence abroad; and it appears that Texas has always entertained a just sense of the weighty obligation incurred by her in consequence of the liberal, prompt, and efficient aid rendered to her by the memorialists. Want of means alone has prevented the liquidation of the debt. No disinclination to discharge her obligation to the memorialists has at any time being apparent on the part of Texas. On the contrary, repeated efforts have been made to effect payment of the interest on these bonds; and finally, all the benefits looked for from the possession of these vessels of war having been enjoyed, and a position of security having by their means been attained, the Legislature of Texas passed a Law

authorizing and directing the sale of the aforesaid vessels, the proceeds to be applied in part payment of the indebtedness of the Republic to the memorialists. This Act, however, in anticipation of annexation to The United States, was repealed. In the Treaty of Annexation itself Texas endeavoured to make some provision for the discharge of a portion of this obligation: of the 350,000 dollars stipulated in that Treaty to be paid to Texas by The United States immediately after its ratification, the large proportion of 250,000 dollars was to have been devoted to this object; the remainder of the amount to be liquidated with the rest of the Texan debt, out of the 10,000,000 dollars which were to have been appropriated by The United States for that purpose.

"In the Annexation Resolutions subsequently passed by Congress it was, as the Senate is aware, left to the discretion of the President of the United States to choose one of two alternatives to be proposed to Texas. One of these alternatives left to be settled, by negotiation between the two parties, the terms on which Texas should be admitted to the Confederacy. Had that alternative been offered to Texas, the Committee are induced to believe—from the previous action of that Republic, from her avowed and earnest desire to discharge her obligations to the memorialists, from the action of her Legislature, and from the effort to make the matter a distinct subject of treaty stipulation—that she would have made ample provision for the payment of the memorialists. The other alternative contained no such provision, and it was the one tendered to Texas, thus leaving the memorialists no resort but their present appeal to the Congress of The United States.

"The Committee regard the claim of the memorialists as fully sustained on the ground:—

"First,—That as an inducement to the Act of Annexation, Texas received assurances from the Government of The United States that after her admission into this Confederacy her wishes and her honour as an independent community would be as faithfully consulted and guarded as if express provision had been made to that end by previous agreement.

"Second,—That in accordance with the terms of Annexation, Texas ceded to the General Government of The United States, among other public property, all her 'navy, navy-yards, arms, and armaments,' and that she has actually given up to The United States all that remained to her of the very navy furnished by the memorialists. Three of the vessels have been ordered to be sold, the proceeds to be paid into the Treasury of The United States, and one of them to be fitted for the immediate service of The United States.

"Third,—That by her annexation to The United States, Texas has been deprived of her duties on imports, almost her sole source of revenue, which were solemnly pledged to the memorialists for the faithful liquidation of the interest and principal of the aforesaid bonds.

"Fourth,—That The United States having thus become possessed of the identical vessels furnished by the memorialists, and also of the public revenues of Texas pledged for their payment, are properly responsible for the discharge of that obligation to the memorialists which the Republic of Texas justly incurred and uniformly regarded as binding and sacred.

"In view of all these facts, and after a careful and deliberate examination of the case, the Committee have agreed to recommend the speedy settlement of the claim of the memorialists, and for that purpose report the accompanying bill.

"The form of the bond is as follows:—

"REPUBLIC OF TEXAS.

"*B. No.* 1. *Ten per Cent. Loan,* 280,000 *dollars.*

"The Republic of Texas promises to pay to Frederick Dawson, or order, 280,000 dollars to be redeemed on the 1st day of December, 1843, with interest thereon at the rate of ten per cent. per annum from the date thereof, the said interest to be paid semi-annually, on the 1st days of June and December, at the Agency of The United States' Bank of Pennsylvania, in London, where the bond shall also be redeemed. The first payment of interest to be made on the

1st day of December, 1839. For the faithful redemption of this bond, interest and principal, at the agency aforesaid, the revenues and public faith of Texas are solemnly pledged, by virtue of an Act of the Congress of Texas, bearing date the 16th day of May, 1838. It is further stipulated, in conformity with a provision of the said Act, that the holder of this bond may at any time surrender the same, and in lieu of principal and interest due thereon, receive any of the public lands at the minimum prices fixed by the Government for the sale of their vacant lands.

"In testimony whereof we, the undersigned Commissioners duly authorized to that effect, have hereunto set our hands and seals this 13th day of November, in the city of Baltimore, the year 1838.

"A. P. BURNLEY, [L.S.]
"SAM. M. WILLIAMS, [L.S.]
"Commissioners.

"Countersigned on the back of the Bond by

"ANSON JONES,
"Minister Plenipotentiary of Texas near the Government of The United States.

"And indorsed in blank by FREDERIC DAWSON."

It is clear then, that so far as the merits of this claim are concerned, they are identical with those involved in the claim of Mr. Holford; and it follows therefore that the reasons (which I have given at length in my judgment in that case, and which induced me to hold The United States responsible) are equally applicable, and govern my decision in the present case.

Two additional objections, however, have been made to the jurisdiction of the Commissioners, in respect of this claim of the representatives of Philip Dawson, by the learned Agent of The United States, which were not advanced as against that preferred by the executors of the late Mr. Holford. The first is, that this claim is only colourably the claim of Philip Dawson, being, in fact, that of Frederic

Dawson, a naturalized citizen of The United States, and therefore not entitled to be heard under this Convention; and the second is, that even if it be the claim of Philip Dawson, who was not naturalized, still, as he was domiciled in The United States at the period when the contract alluded to was made, he is to be considered, for the purpose of this investigation, and under the Convention of February, 1853, a citizen of The United States, and barred from claiming as a British subject.

With respect to the first assertion, it arises out of the fact that Frederic Dawson entered into the contract in his own name, but in fact as the partner of his brother, and for the benefit also of two other persons—a Mr. Schott and Mr. Whitney. The contract, however, is stated to have been made on behalf of the firm, and thus Philip Dawson became beneficially entitled to a moiety. Each applied for the benefit of the Bankrupt Acts, and in their respective schedules returned this debt as assets. Philip died before being adjudicated a bankrupt, but Frederic was declared one in the month of April 1843.

According to The United States' Bankrupt Act of the 19th of August, 1841,* all the joint stock of the firm, as well as the separate estate of the partners, vests in the assignees. Philip Dawson dying, the joint property, as well as the separate estate of each, vested in the assignee by virtue of the decree in bankruptcy pronounced on Frederic Dawson's application.

The assignee, under the third section of the Act, took the estate of Philip Dawson as the latter held it, and by the fourteenth section the entire right and interest of both partners in the assets of the firm vested in him, and consequently he is the representative of Philip Dawson; and if Philip Dawson could, as most undoubtedly he could if he had not died or been made a bankrupt, have represented before any tribunal the whole of this claim, because a partner in the firm for whose benefit the contract was made, his assignee, on his being made a bankrupt, could also have represented it. And it makes no difference that the bank-

* Statutes at large, Vol. V, Page 448.

ruptcy of the firm was declared on the application of his brother, because, as is evident from the section to which I have already referred, the joint stock of the company and separate estate of each partner become vested in the assignee, if only one of the partners makes the application; and being so vested in the assignee, if Philip Dawson could as a British subject, although resident in The United States, have come before this Commission to recover his debt, the creditors might have used his name for the purpose of prosecuting his claim, and so therefore may his assignee. So far therefore as the right to prosecute this claim is concerned before this Commission, the assignee of Philip Dawson standing in the place of Philip Dawson, as the representative of Philip Dawson, and on behalf of his creditors and the creditors of the firm of Dawson and Company, is properly before us. And what to my mind is conclusive on this subject is this, that if, after payment of all the creditors, it should appear there is a surplus, that surplus would have to be handed over to the private estate of each bankrupt; and assuming for the moment the bankrupt Philip to be clearly a British subject, it would follow that he would have a clear right to claim under this Convention a debt due from the United States' Government to himself and brother jointly, notwithstanding that brother was a naturalized citizen, and for the reason that he would not the less have a personal interest in its recovery. My colleague contends, with reference to other claims which have been brought before us, that no objection ought to be taken to the claim of an American citizen, although he may have a foreigner for a partner, domiciled in England, jointly interested with him in its recovery. I do not therefore understand how, consistently with this view, he can deny to a subject of Great Britain the right to present a claim under this Convention, on the ground of his having for a partner a naturalized citizen of The United States jointly interested with him. It is true that The United States' Agent refused to consider this claim in any other light than the claim of Frederic Dawson; but this cannot alter the fact that Philip Dawson had a clear

interest in an undivided moiety of the sums secured by the bonds.

Admitting then that Frederic Dawson, being a naturalized citizen of The United States, could not claim under this Convention as a British subject, I pass to the second objection, which, as I have already stated, is to the effect that, admitting, for the purposes of argument, that this is the claim of Philip Dawson, yet that, inasmuch as he was *domiciled* in The United States at the time the contract was made, he is not entitled to claim as a British subject under the terms of this Convention.

This objection, founded on the effect of domicile in altering the national character of the party domiciled, has been so constantly urged against every English claim presented to this Commission where the claimant has been resident abroad, and has been moreover as constantly held valid and good by my colleague, and, on my differing with him, by the umpire appointed under the Convention to decide upon all questions in difference between us, that I feel it my duty to point out, so far as I am able, the misapprehension under which, in my opinion, they labour.

What is then the proposition contended for? It is in effect this,—that "an English subject domiciled abroad is to be held as having changed his national character, and to be disentitled to look to the British Government for protection." When this startling doctrine was first broached by the learned Agent of The United States, I confess that it took me by surprise, nor is that surprise diminished when I find that the effect of its being admitted by my colleague and the umpire will be the rejection of a large class of claims presented on behalf of British subjects engaged in trade abroad, which have actually been the subject of discussion between the two Governments, and with reference to which I must, therefore, conclude this Convention was entered into.

The first case in which the objection was taken was that of the Messrs. Laurent, who it was proved were British-born subjects, resident in Mexico, and there engaged in trade; their complaint being that they had been unjustly deprived

of some property by the Commander-in-chief of The United States' Army. The merits of their claim, however, were not gone into, because it was urged they were not British subjects according to the rules of international law, but Mexican subjects, and therefore not entitled to be heard before this Commission. My colleague agreed in this view of the law, and the umpire has decided in his favour.

It has been also taken in the case of Mr. Uhde, Her Britannic Majesty's Vice-Consul at Matamoros, in Mexico, a British-born subject, carrying on business as a merchant in that city; in that also of Messrs. Kerford and Jenkins, British-born subjects, carrying on business between Mexico and England, and generally residing in the latter country; in that of Messrs. M'Calmount, Greaves, and Company, English merchants at Vera Cruz; and in several other cases. It was undeniable that, *primâ facie*, all these claimants were entitled under the terms of the Convention, namely, as "subjects of Her Britannic Majesty," to have their claims entertained by the Commissioners; yet the effect of the decision in the Laurent case has been to put an exceptional construction upon the plain words of the Convention, and thus, without any consideration of the merits or justice of the claims, they must be—if my colleague and the umpire continue to retain the opinions they have expressed, and upon which their decisions in the case of the Messrs. Laurent is founded, rejected and dismissed as without the jurisdiction conferred on the Commissioners by the Convention of the 8th of February, 1853.

I am glad, however, that this case gives me an opportunity of again referring to the arguments of the learned Agent of The United States, as also to the opinions expressed by my colleague and the umpire on this subject; the more especially as Mr. Reverdy Johnson, counsel for the claimants, has stated several instances where the contrary of the doctrine contended for has been successfully maintained by the Government of The United States.

When this case was brought on before us, the learned Agent of The United States objected to its being heard, on

the ground that I had already decided the question—which he alleged to be the only one in issue—in the judgment delivered by me in the case of the Messrs. Laurent; and he referred to a passage at page 10 of my printed Opinion, beginning thus:—"If I am right in the rule of interpretation which I have adopted, it is clear that *they* could not; for it would be ridiculous to suppose that either of the Contracting Parties intended this international tribunal to adjudicate upon the claims of acknowledged citizens or subjects upon their own Government." In fairness, however, the learned Agent should have begun at the commencement of the paragraph, and he would then have had to state the class of persons to whom these remarks alone had reference. Now the class of persons to whom I there referred, as appears by the few lines immediately preceding those read by the learned Agent, were "American citizens by birth, having claims against the American Government," claiming to present them before the Commissioners "as British subjects by descent." It is clear that claims advanced under such circumstances would not be within the meaning of the Convention; but I cannot discover any such identity of position between the claim of the representatives of Philip Dawson and the claims there alluded to, as could by any process of reasoning render the remarks applicable to the latter necessarily so to the former.

To return, however, to the exception on the ground of nationality, which has been taken in the case I am considering. The learned Agent stretches the principle for which he contends to this length,—that "*domicile*" in a foreign country deprives a British subject of the right to call for the protection of the Government of his native country, and consequently he has no right to appear before this Commission as a British subject, because, in fact, he is not a British subject in the sense of this Convention. With respect to the first portion of this proposition, I should have thought the acknowledged practice of nations would have sufficiently exposed the error which lies at the root of the whole objection. As a matter of fact, we know that an English or American citizen residing in a foreign land does not cease to

receive the protection of either Government, and that it has been the practice and habit of both countries to insist, as a matter of right, that redress and indemnity should be afforded to their citizens in respect of outrages committed by the Government of the country in which they may be domiciled; while, as a matter of international law, it is indisputable that such injuries, if not redressed, would, all other means being exhausted, justify reprisals on the part of either Great Britain or The United States. If then the interference of the Government of a country on behalf of a citizen domiciled in another country is justifiable, upon what ground is the right to interfere based? Obviously on the ground that the citizen so domiciled abroad has not thereby lost the right to the protection of his Government; in other words, that not having denationalized himself, he still remains to all intents and purposes a subject of the country of his birth; and not only has he the right to call for protection of the country to which he owes the allegiance of a subject, but by virtue of that allegiance his country has contracted the obligation to yield him protection when justly required.

With great respect to the opinions of my colleague and the umpire, I conceive they have suffered themselves to be misled in supposing that the doctrine of the Prize Courts on the subject of domicile is in any way applicable to the solution of such a question as the present. We are not asked to decide whether the domicile of Mr. Philip Dawson would be sufficient, supposing a war to exist between Great Britain and The United States, to found the right of a maritime captor to any vessel of Mr. Dawson's which he might happen to meet and take portion of; nor are we asked to decide whether *flagrante bello*, with reference to the belligerent rights of maritime prize, he is not to be considered a citizen of The United States; but we are asked to say whether the simple fact of a residence abroad has converted a natural-born British subject into a citizen of the country of his domicile. The decisions however of the Admiralty Prize Courts, and the *dicta* of the judges with reference to the nationality of vessels and their owners, which have been alluded to, do

not, in fact, go the length which they have been represented as going. No jurist or judge has ever decided more than this, viz., that in time of war a neutral domiciled in the country of either belligerent is to be considered *pro hac* the war a subject of that Government; but then only in relation to the property that he embarks in trade, or has within the limits of the country of his domicile. It is nowhere stated that by taking up his residence for the purposes of trade he has changed his national character or forfeited his right to the protection of his country; on the contrary, the very distinction which is drawn between the property embarked in trade and within the limits of the country of his domicile, *and himself* without reference to that property, shows that except *quoad* that property, he remains a subject of the country of his birth. His rights as respects that property are, it is true, affected, but *he* is not, because of that property or on account of his domicile, denationalized; nor has he either necessarily acquired the national character of the country in which he is domiciled, and this test that he has not may be applied,—that if he were to leave the country of his domicile and travel in another foreign country, and be there injured by the Government, he could not appeal for protection to the country in which he was residing at the time he suffered the wrong, nor could the Government of that country interfere of right on his behalf. The country to which he must appeal, and which alone under any pretence would be justified in interfering to protect him, would be that to which he owed a natural allegiance, and not a mere temporary allegiance such as springs from the fact of residence.

With reference to the effect of domicile divesting an individual of his national character, I referred in my opinion on the case of the Messrs. Laurent, p. 6, to Genessee's case, 2 *Knapp's Reports*, 345, as a conclusive authority on the point. I was met, however, by the assertion that the *facts* of that case were such as showed that it could not be used as an authority for the position for which it was cited.

It was alleged that, so far from Messrs. Boyd and Kerr

being domiciled in France, they were living in England, and that it was in respect of an injury done them in and through the person of their clerk, a Frenchman of the name of Genessee, wh was guillotined, that they claimed; and that therefore the question relative to a foreign domicile did not arise. This statement of the facts, however, is not correct; Messrs. Boyd and Kerr *were domiciled in France, and were actually carrying on business as bankers there at the time when the injury complained of was perpetrated;* and except in so far as the assignats were in his name, the clerk Genessee had nothing to do with the case. The wrong was done to an English firm domiciled and carrying on business in Paris, and on that ground Messrs. Boyd and Kerr were held to be clearly entitled to compensation *as British* subjects. I turn now to another instance, which, in so far as The United States is concerned, is as binding on its Government as I should hold the preferment by the British Government of Genessee's case, and the decision upon it, to be binding on the Government of Great Britain. I allude to one of the chief causes of the Mexican war.

One cause of this war, it is well known, was the refusal of the Government of Mexico to pay certain debts which were due from Mexico to American citizens, the greater portion of whom were actually domiciled in that country, and who invoked and received the protection of the Government of The United States in their character of citizens of The United States. In the Treaty* which was concluded at the close of this war between The United States and Mexico, it was agreed as follows:—

(Art. 13.) "The United States engage moreover to assume and pay to the claimants all the amounts now due to them, and those hereafter to become due by reason of the claims already liquidated and decided against the Mexican Republic, so that the Mexican Republic shall be actually

* Treaty of Peace and of Boundaries of Settlement. Statutes at Large, page 932-3, Articles 13, 14, and 15.

exempt for the future from all expenses whatever on account of the said claims."

* * * * *

(Art. 14.) "The United States do furthermore discharge the Mexican Republic from all claims of citizens of The United States not heretofore decided against the Mexican Government."

* * * * *

(Art. 15.) "The United States, exonerating Mexico from all demands on account of the claims of their citizens mentioned in the preceding Article, and considering them entirely and for ever cancelled, whatever their amount may be, undertake to make satisfaction for the same to an amount not exceeding three millions and a quarter of dollars. To ascertain the validity and amount of these claims a Board of Commissioners shall be established by the Government of The United States."*

This was accordingly done, and in the Act of Congress the President was ordered to appoint three persons who should constitute a Board of Commissioners, to meet at the city of Washington at some early day to be designated by the President, whose duty it should be *to receive and examine all claims of citizens of The United States upon the Republic of Mexico*, which were provided for by the Treaty between the two Governments. The words used in the Treaty and in this Act are exactly similar to those employed in the Convention under which this Commission is formed:

"All claims on the part of citizens of The United States upon the Government of Her Britannic Majesty,"—being those used in the Convention of February, 1853.

"All claims of citizens of The United States upon the Republic of Mexico,"—being those employed in the Convention of February, 1848, and the Act of Congress of the same year.

Now it is stated by Mr. Reverdy Johnson of his own

* United States' Statutes at Large, page 393.

knowledge—he having been engaged as counsel for several of the claimants,—that the same point which is now raised against the admission of claimants natural-born British subjects *domiciled* abroad was raised before the Board of Commissioners to which I have just alluded, sitting at Washington, the objection being "that —— ——, in consequence of his domicile in Mexico, was not to be considered a citizen within the meaning of the Convention." It was, however, unanimously overruled, and of the sum of three million of dollars all but two or three hundred thousand were awarded to citizens of The United States *domiciled* in Mexico.

It is not necessary for me to state the circumstances attending each separate claim. A doubt was raised respecting one of the claimants, it having been imagined that he had a partner resident in The United States; this, however, was proved to be an error. And thus we have it as a fact, that on precisely the same question being raised as is now raised, a decision was come to, which has never been impugned, and which is in perfect accordance with all the authorities bearing on the point. The Mexican war, therefore, and the Treaty, together with the decisions of The United States' Commissioners, establish at any rate, as against The United States' Government, these two conclusions:—Firstly, that The United States' Government claimed the right to interfere to protect, and to insist as a matter of right that justice should be done to its *citizens domiciled in Mexico;* and secondly, that the words "citizens of The United States," used in the Convention of February, 1848, and the Act of Congress of the same year, properly included "citizens of The United States *domiciled* in Mexico." With what propriety then can it be now insisted that the words "British subjects," used in the Convention of February, 1853, does not properly include "British subjects *domiciled* in Mexico or elsewhere?"

I am of opinion, therefore, that the representatives of Philip Dawson are fairly entitled to receive from the Government of The United States a moiety of the principal sum due on this bond, with interest to be calculated thereon,

according to the terms of the bond, at the rate of ten per cent. per annum, from the 13th of November, 1838, to the 15th of January, 1855.

In this case Mr. Upham, the American Commissioner, did not deliver any judgment, simply confining himself to dissenting from that of the British Commissioner.

FLORIDA BONDS—(Philip Dawson.)

London, November 29, 1854.

The umpire reports, that in his opinion Messrs. Dawson have no right to claim before this Commission, being, according to the Law of Nations, citizens of The United States and not British subjects; and were they British subjects, the claim being for transactions with the independent Republic of Texas, before it became a State of the United States, the claim cannot be entertained by this Commission.

JOSHUA BATES, *Umpire.*

The "Lady Shaw Stewart."

Mr. Hornby, British Commissioner:

I do not conceive that it is necessary to enter upon any consideration of the circumstances under which the loss sustained by the claimants arose. That the whole proceedings were founded in wrong is evident from the correspondence which has taken place between the two Governments. Mr. Webster, in his letter to Sir Henry Bulwer, under date of the 12th December, 1850, admits this to be so, when he informs him that the case of the owners of the "Lady Shaw Stewart" had been "referred to the Secretary of the Treasury, who, as the readiest means of prosecuting the desired inquiry, requested the late Collector of the Customs at San Francisco to procure such information in relation to the case as might be accessible. From this officer's reply," continues Mr. Webster, "it will be seen that his account of the seizure and sale of the 'Lady Shaw Stewart' by the authorities at San Francisco does not materially differ from Captain Roper's account of the same transaction, to which reference is made, though they differ widely in their estimates of the *value of the vessel*— the one placing it at *six*, the other at *ten* thousand dollars. With regard to the indemnification of the parties interested, however, it will be necessary for them to bring satisfactory proof of the *amount of the losses* they have sustained, before the case can be recommended to Congress for the proper provision of law."

Irrespective of the value of the vessel, it appears that Captain Roper had sent in an account of damage sustained, amounting to two thousand seven hundred dollars. On the receipt of Mr. Webster's letter, Lord Palmerston communi-

cated its contents to the claimants, informing them that they must furnish satisfactory proof of the losses sustained. Accordingly, on the 11th March, 1851, Mr. Buckham sent into the Foreign Office a declaration, accompanied with vouchers of the losses, in which he accepts the estimate of the value of the vessel made by the Collector, and fixes the damage beyond such actual value at one thousand six hundred and ninety-five dollars. In March, 1851, these vouchers were forwarded to the Government of The United States; and in the month of February, 1852, Mr. Crampton called the attention of Mr. Webster to the fact, that the statement of losses, with vouchers, as required by Mr. Webster, had been furnished for upwards of a year, and that nothing had, up to that date, been done towards effecting a settlement. In July, 1852, Mr. Crampton again called the attention of the then acting Secretary of State of The United States to the facts mentioned in his former letter, and, in the same month, received for answer from Mr. Hunter that application had been made to Congress on behalf of the owners of the vessel; but up to the date of the Convention under which this Commission acts, no appropriation of any sum had been made.

In the report which the Collector of San Francisco made to Mr. Webster, to which I have already referred, he says, "The proceedings against the Captain, and the sale of his vessel, I regarded as wholly unjustifiable and oppressive, and endeavoured, so far as I could, to protect him; I was even threatened with an attachment for contempt for keeping an Inspector on board of her after the sale by the sheriff. I have before me a letter from Captain King, an old ship-master, and fully competent to judge, estimating the value of the brig at six thousand dollars."

On the hearing of this case my colleague appeared to think the readiness of the owners to accept the estimate of Captain King somewhat suspicious, nor did he consider that any damage was sustained that the Government were liable to make good, beyond the value of the vessel. I have the misfortune to differ from him on both these points. So far

from considering the willingness of the owners to accept the six thousand dollars a suspicious circumstance, I look upon it rather as indicative of a desire to meet any reasonable offer that would lead to a prompt settlement; and it appears to me that the very direction given by Mr. Webster, relative to the furnishing of vouchers of losses sustained, implies that it was supposed that further losses, beyond the one loss of the vessel, were sustained, which the Government in a spirit of justice were liable to make good; moreover, these vouchers were furnished, and are at this moment in the possession of The United States' Government, and certified copies of them have been laid before us. No exception has ever been made to these documents during the two years that the officers of The United States' Government have had them in their possession, and I think, therefore, in the absence of any evidence to the contrary, that we are bound to assume them correct.

Under these circumstances I conceive that, in allowing this claim to the extent of 7,695 dollars, we are only doing that which Congress, actuated by a sense of justice, would have done, and that, in the face of the vouchers furnished, we should be doing the claimants a grievous injustice if we limited our award to the mere value of the vessel. To this sum, then, of 7,695 dollars, interest from the date of furnishing the vouchers, at the rate of five per cent per annum, must, in accordance with the course adopted by this Commission in other cases, be added.

In this case Mr. Upham dissented from the opinion of the British Commissioner, but he has given no written judgment.

London, 29th November, 1854.

THE umpire awards as due from the Government of The United States to the owners of the "Lady Shaw Stewart," or their legal representatives, the sum of six thousand dollars on the 15th January, 1855.

JOSHUA BATES, *Umpire.*

The "Beaver."

Mr. Hornby, British Commissioner:

This is a claim on the part of the Hudson Bay Company against The United States, for the detention of their steam-vessel, the "Beaver," between the 28th of December, 1851, and the 24th of January, 1852. The facts in connection with this claim are shortly as follows. Until 1849 The United States' Government had not established any Custom-house for the Puget Sound district of Oregon; and even so late as 1852, when the "Beaver" made her first voyage after the establishment of a Custom-house at Olympia, the extreme point of Puget's Sound, the Custom-house officer, according to the evidence before the Commissioners, excused himself for not being prepared wth the usual printed forms of entry, certificates, &c., on the ground that there had not yet been time for the preparation of these forms since the establishment of the office. The cause of Olympia being made a point of entry arose, it seems, from the fact of the inconvenience to which traders were exposed in having to go 300 miles out of their course to enter their cargoes, &c., at Astoria, the first and then also recently established Custom-house in Oregon.

It appears, the "Beaver" was employed in towing up the "Mary Dare" to the Company's fort, Nisqually; that she was in ballast, having a few goods on board for barter with the Indians; and there were also two young ladies on board the "Mary Dare." These young ladies were landed at Nisqually, after which the "Beaver" and the "Mary Dare" proceeded to Olympia for the purpose of entry. At this port the Captain and the Company's Agent say they informed the

Customs' authorities of the fact of the "Beaver" being in ballast, and also that she had some goods on board, enumerating them from memory; and having talked over with the the officer the duties payable thereon, and seeing that nothing was arranged, the Captain considered that he had done all that he was required to do. He was surprised, however, to learn that the "Beaver" and "Mary Dare" had been seized for a breach of the revenue laws. With the seizure of the latter we have nothing to do. The United States' authorities repudiated it, and ordered the immediate release of the ship; and no claim, therefore, is made, and I think very properly, in respect of it.

No charge, however, was ever brought against the "Beaver," or any pretence alleged for its seizure and detention. All the libel stated was, that the Captain, not having entered the goods on board, the latter were liable to seizure, were seized accordingly, and would be proceeded against according to law. Independently of the fact of there being no charge made against the ship, no law of The United States has been cited which would have justified such a charge.

That the goods were, in strictness, liable to seizure and condemnation is not disputed, although, under the circumstances, the seizure is alleged to have been vexatious and oppressive; and that it was so considered by The United States' authorities is evidenced by the facts, that giving a liberal construction to the law, and in all probability having regard to the then very recent establishment of Olympia as a port of entry, they ordered the goods to be returned, which was accordingly done, less some few packages that were lost while in the custody of the storekeeper.

It was assumed, in the course of the argument against this claim, that the goods must be considered as having been adjudicated upon by a competent court, and condemned. That they were, in strictness, seizable is admitted; but I do not see any evidence to lead to, or which justifies, the presumption that the libel was ever even heard by a court, still less that the goods were actually condemned.

There is literally no evidence before the Commissioners

that the case was even tried; all we have is a libel. That no action took place on that libel for nearly two months is clear, since on the 21st of January the Captain gives notice to the Customs to take some steps in the matter; and three days after this notice the ship is given up, and ultimately the goods themselves are restored. I have endeavoured to find out what there is in these simple facts to warrant the assertion, so positively made, that the goods were condemned; and I am totally at a loss to conceive how even a presumption to that effect can be raised.

However, the fact, either one way or the other, is wholly immaterial. The claim is made, not for the seizure of the goods, but for the detention of the vessel; on that point there is distinct evidence; nor is the detention in any way justified. No legal charge is shown to have been brought against the vessel, and no law is cited which would have warranted its detention for one moment longer than was necessary to have landed the goods which were the object of the seizure, and that was done before the expiration of two days. For this illegal detention the claimants are entitled to compensation. The Company's agent estimates the direct and incidental losses occasioned by the detention of the vessel at a very large sum, but they are not, in my opinion, entitled to all the consequential damage they have claimed, even if the evidence of it were conclusive. The actual expenditure, however, on account of the vessel, while detained, is proved to have been not less than one thousand pounds; and I therefore award to the claimants that sum.

London, 29th November, 1854.

THE umpire awards to the Hudson's Bay Company the sum of one thousand dollars, due from the Government of The United States on the 15th January, 1855.

JOSHUA BATES, *Umpire*.

The "John."

Mr. Hornby, British Commissioner.

This is the case of an American ship and cargo seized on the 5th of March, 1815, by H. M. ship "Talbot," Lieutenant Mawdesley, commander, in lat. 31° 18′ N., and long. 76° W., in ignorance of the peace that had been concluded between Great Britain and the United States of America, on the 14th of December, 1814. From the evidence adduced, it appears that a prize-master and crew were put on board, that the two vessels sailed in company; but that, in the course of the night of the 11th of March, the prize was lost on the rocks between Point Mulas and Moha Keys, on the Island of Cuba, the "Talbot" being only saved from a like fate by hastily putting about, and standing out to sea.

In the year 1818, the case was brought under the notice of the High Court of Admiralty, by the owner of the ship taking out a monition against the captor to proceed to adjudication; and a full trial was had before Lord Stowell, then Sir William Scott.

From a Report in 2nd Dodson, p. 336,* it appears that the claimant rested his case on two grounds: first, on the general right to "restitution" in the case of a capture made out of due time and place; and, secondly, on mismanagement of the ship while in the possession of the captors, by which the misfortune was occasioned.

Lord Stowell, however, decided that the capture and possession was *bonâ fide*, and that the individual was acting regularly in pursuance of that possession, by means of his agents; and that any mere misfortune happening in such a custody

* See Case of "The John," 2nd Dobson, 336.

not being tortious, the captor was not answerable in the way of compensation for the damage this misfortune had produced; although, if no such misfortune had happened, he must have relinquished the possession, and returned the propety to the owner: and he also declared that upon the evidence submitted, "due care of the vessel while under possession by the cruiser was applied," observing that, where due care in possession is taken, the captor is "not answerable for mere misfortune; that misfortune must fall where it immediately alights."

Since the year 1818, no further step has been taken in the matter, the parties interested being apparently satisfied that Lord Stowell's decision precluded all hope of any advantage being gained by further applications for relief; and no claim was ever at any time made upon the Government of Great Britain, until the month of March, 1851, when Mr. Abbott Lawrence, then Minister of The United States at the Court of St. James's, in introducing the case to the notice of the British Government, apologized for doing so after the long interval which had intervened between the occurrence and the application which he was then instructed to make for the first time. The case now comes before us on its merits, and although I have no doubt that, in strict law, and on the authority of the great text-writers on international jurisprudence, the British Government are not liable, under the words used in the Treaty of Peace and Amity of 1814, to make restitution, in the sense of compensation, in respect of a loss by mere accident, and incurred without any fault on the part of the captor; yet I am inclined to give a liberal construction to the language and to the intention of the high Contracting Parties to the Convention under which we act, and to award to the claimant (the widow of the owner of the "John") a fair sum in respect of the value of the vessel and cargo. The agents for Mrs. Shapley have assessed the damages at 10,000 dollars. I conceive, however, that the evidence is wholly insufficient to support so exaggerated an estimate. So far as I have been able to learn, it does not appear that the value of a small coasting schooner of the

build, burden, and age of the "John," together with the cargo of molasses on board, would exceed, upon any fair computation, the sum of 2,800 dollars; but I am willing to take the umpire's opinion upon this point.

I regret, however, that it will be necessary for him to decide upon the question of whether or not interest from *the date of the capture* should be allowed. I am disposed to award interest from the date of Mr. A. Lawrence's application; but as my colleague is of opinion that interest should be given from the month of March, 1815, it will become necessary for the umpire to take this matter into his consideration. I am at a loss to conceive how, under the circumstances, it can be held that the claimant, as against the British Government, is entitled to interest from that date. No application has ever been made to the Government, except that to which I have alluded, in the year 1852. It is true, as I have stated, that a monition was filed against the captor, and that Lord Stowell refused to hold him liable; but this was a matter of private litigation, and cannot be considered in the light of an application to the Government. Moreover, viewing the claim as one upon the generosity of the Government of this country, I cannot do more than award the fair value of the vessel and cargo, with interest at five per cent. from the date of Mr. Abbott Lawrence's first application to the Department of Foreign Affairs.

MR. UPHAM, United States' Commissioner:

IN the able argument addressed to us by her Majesty's counsel, the British Agent, some stress has been laid on the decision of Sir William Scott (2 *Dodson*, 336), on a suit brought against the commander of the "Talbot" for the capture of the "John;" and that authority is considered as conclusive of this claim.

But, in that case, the learned judge expressly declined determining whether or not the claimant had a remedy elsewhere; he only decided, for reasons which he gives at length, that the captor should be personally exonerated.

In determining this question, he says: "I certainly go no further than the expressions used by me warrant, that this individual captor is not liable to this individual sufferer."

"That does not exclude a liability elsewhere, if it exists. Whether there be such a liability in the Government is a question I am not called upon to examine; I have neither the proper parties nor the evidence before me. It is sufficient to observe, upon that matter, that there may be such a liability; there, doubtless, would be, if the Government had not made due diligence in advertising the cessation of hostilities, in the quarters and at the periods stipulated, if that were practicable.

"Where property, captured after peace has taken effect, is lost by mere chance, without any fault on the part of the captor, whether an obligation is incurred to restore in value what has been taken away by mere misfortune, the terms of the contract have not specifically provided for; and just principle seems to point another way; that, however, is not the question before me for my decision."—(*Schooner John, Beck, master*, 2 *Dodson*, p. 336.)

This case conflicts with the opinion of the same learned judge in the "Mentor," 1 *Robinson*, p. 183. He there says, "that the seizure of a vessel is a belligerent right, which is not exercisable in time of peace. When there is peace, a seizure, *jure belli*, is a wrongful act, and the injured party is

entitled to restitution and compensation." He further says, "It is not so clear that the captor is liable to costs and damages, where peace has not been notified. The better opinion seems to be, that the captor is liable to costs and damages, and entitled to indemnification from his Government, whose duty it was to have given notice."

Both these cases sustain this point, that, when there is a want of due diligence in advertising the cessation of hostilities, the injured party is clearly entitled to indemnification; and Vattel says, also, "that those who shall, through their own fault, *remain ignorant of the publication of the truce*, would be bound to repair any damage they may have caused contrary to its tenor."—(Vattel, book 3, ch. 16.)

There seems to be no doubt that the principle, thus laid down, is correct. But what constitutes due diligence, under such circumstances, is a question at times of difficult determination. It is, therefore, exceedingly desirable that it should be settled by the parties in advance. Vattel says, in the same section, "in order as far as possible to avoid any difficulty" on this point, "it is usual with sovereigns, in their truces, as well as Treaties of Peace, to assign different periods for the cessation of hostilities according to the situation and distance of places."

The question then arises, whether this assignment of different periods for the cessation of hostilities, according to the situation and distance of places, *was not designed by the parties to establish the time to be holden as reasonable notice within such limits.* Such clearly is the ground assigned by Vattel for such provisions in treaties. What would be reasonable, can be determined just as well before the Treaty as after, and the whole tenor of the Treaty, in this case, goes to show that the Contracting Parties had this question in view, in establishing the various periods within which peace should take place in different localities.

The Treaty provides that "immediately after the ratification, orders shall be sent to the armies, squadrons, officers, subjects, and citizens of the two Powers, to cease from all hostilities; and, to prevent all causes of complaint which may

arise on account of prizes, which may be taken at sea after said ratification, it is reciprocally agreed, *that all vessels and effects*, which may be taken after the space of twelve days from the said ratification, upon all parts of the coast of North America, from the latitude of 23° north, to the latitude of 50° north, and as far eastward in the Atlantic Ocean as the 36° of west longitude from the meridian of Greenwich, *shall be restored on each side:* that the time shall be thirty days in all other parts of the Atlantic Ocean, north of the equator, and the same time for the British and Irish channels, for the Gulf of Mexico, and all parts of the West Indies; forty days for the North Seas, for the Baltic, and for all parts of the Mediterranean; sixty days for the Atlantic Ocean, south of the equator, as far as the latitude of the Cape of Good Hope; ninety days for every part of the world south of the equator, and one hundred and twenty days for all the other parts of the world without exception.—(*United States' Statutes at Large, vol.* 8, *p.* 219.)

These several periods were undoubtedly agreed upon as equivalent to notice that peace existed within the prescribed limits. It cannot be supposed that the contending parties designed to append to these periods a further indefinite, uncertain time, as to what should constitute due diligence in giving notice, or to restrain or limit the fact in its consequences, that peace *should exist at the times named.*

After the periods thus agreed upon, the obligation to cease from hostilities was imperative.

Such being the case, we have the true starting-point from which to consider the question of the respective rights of the parties. It is manifest that collisions might then occur without the imputation of any wilful wrong in the violation of the compact entered into. The injury would, however, exist, and the actual loss sustained should, on every principle of equity and justice, as well as of compact, be fully met.

The stipulation was, therefore, entered into by the parties, that "all vessels and effects" that should be taken after the several times specified "should be restored." The

question then arises, what interpretation we shall place on this provision? Does it mean that vessels and effects captured shall be returned *in specie*, or that the identical property merely shall be returned, and where this has become impracticable that no restitution or satisfaction shall be had? I cannot believe that such was the intent of the parties.

They acknowledge themselves bound by a constructive notice of the peace, and it was their own fault that they did not take time enough, or did not use diligence enough, to give *actual notice* of the peace "to their armies, squadrons, officers, subjects, and citizens," as was specially provided should be done by the Treaty.

Under such circumstances, the doctrine of Vattel, adopted by Sir William Scott, applies, "that those who through their own fault remain ignorant of the publication of the truce are bound to repair any damage they may have caused contrary to its tenor."

The party injured is in the same situation as a neutral whose vessel has been seized and destroyed as the property of a hostile power, where it is holden the neutral can only be justified by a full restitution in value.—(1 *Wildman, vol. 2, p.* 175.)

There is no other measure of damage that justly meets the requirements of the case. The treaty provides not only that "all vessels," but also "their effects," which may be taken, after a certain specified number of days, within certain described limits, shall be *restored* on either side. But if the effects of a vessel, consisting of provisions or other articles, are taken and consumed, or are otherwise disposed of, so they cannot be restored specifically, it will hardly be contended that no remuneration is to be made.

If this be so, the rule would equally follow in relation to the vessel. Restoration and restitution are synonymous. One meaning of the word "*restore*," as laid down by Webster, is, "to make restitution or satisfaction for a thing taken, by returning something else, or something of different value;" and this is the meaning which should be rightfully attached to the word in the Treaty.

I do not understand that this is, in reality, denied; but the position is taken by Great Britain in this case, that she is relieved from restoring the vessel, for the reason that it was subsequently cast away and lost by the act of God, and no one is accountable.

If the case can be brought within this principle the excuse might avail, but there are circumstances connected with it that preclude such defence. No one can plead the destruction of property as the act of God, who is wrongfully in the use and control of such property. He is a wrong doer from the outset; he has converted the property from the instant of possession, and the subsequent calamity which may happen, however inevitable it may be, is no excuse for its loss.

The "John" was in the rightful pursuit of a lawful voyage, at a time and place when peace existed by the express stipulations of the parties, after taking such period for notice as they held that the case required.

She had pursued her course northwardly some four or five hundred miles out from harbour, on her way to her destined port. She was there seized, placed under the charge of new men, and her course was directly reversed, until she was taken back to the West Indies, and through mismanagement, or misadventure, was run on shore and lost.

It may have been the ordinary accident of the seas, or may not; but, in any event, she was taken there without right, and subjected to risks to which she was not legally and justly liable. The plea that she was lost by the act of God is not, under such circumstances, admissible. The vessel itself cannot be restored, but such compensation and restitution should be made as the nature of the case admits of.

In the argument, considerable stress has been laid on a quotation in Kent and Wheaton, said to be founded on Grotius, that where collisions arise, after peace exists, the governments "are not amenable in damages, but it is their duty to restore what has been captured, *but not destroyed.*" The citation from Grotius is, however, erroneous. He merely says, in the section referred to, that if any acts be done, in

violation of the truce, before notice can be given, "the government will not be liable to punishment, but the Contracting Parties will be bound *to make good the damage.*"—(*Whewell's Grotius, liber* 3, *chap.* 21, *sec.* 5.)

What shall be the precise effect, as a matter of notice, where different periods of time are stipulated in which peace shall take place, does not seem to have been fully considered and settled. If it shall be held as an acknowledgment of notice, then every subsequent act of violation of it is the act of a wrong-doer, and full compensation follows of necessity.

I can see no possible mode of avoiding the justness or soundness of the construction at which we have arrived, but think it should prevail on every ground of public policy and right interpretation of international compacts of this character.

I am happy to say that my colleague, though he hesitates somewhat as to the views presented, waives his objection to the allowance of the claim, except on the score of interest, and this question is to be submitted to the umpire.

Interest was allowed.

THE "JOHN."

London, November 29, 1854.

THE umpire reports that, in his opinion, there is justly due from the Government of Great Britain to the owners of the schooner "John," or their legal representatives, including interest to the 15th January, 1855, the sum of thirteen thousand six hundred and eight dollars and $\frac{22}{100}$, or two thousand eight hundred and five pounds, sixteen shillings and fourpence sterling, at the exchange of 4 dollars $\frac{85}{100}$ per pound sterling.

JOSHUA BATES, *Umpire.*

The "James Mitchell."

London, December 1, 1854.

The umpire awards to the owners of the ship "James Mitchell" and cargo, or their legal representatives, the sum of twenty thousand dollars, on the 15th January, 1855, to be paid by the Government of The United States.

JOSHUA BATES, *Umpire.*

The "Volusia."

London, December 1, 1854.

The umpire reports that while the brig "Volusia," appears by her papers to have been the property of a citizen of The United States, the vessel was clearly proved to belong to Brazilian subjects, and to have been at the time of her condemnation engaged in a trade prohibited by the laws of that country. The owner, therefore, can have no right to claim before this Commission.

JOSHUA BATES, *Umpire.*

IV B

The "Albion."

Mr. Upham, United States' Commissioner:

The facts in this case have been briefly, but fully, recited; and the question arises how far, if at all, this Commission can interpose the clemency of the Government to relieve the claimant from the loss sustained by him.

It should be borne in mind that we have but one side of the case. Since the filing of the claim before us, it has been impossible to obtain evidence from officers in Oregon on the subject; and the case has been submitted, both at Washington and here, solely on the memorial of the claimant and such evidence as he has furnished.

It appears that the "Albion" left England fully instructed as to the necessity of obtaining licences to trade with the Indians, and to cut timber within the British possessions, or within those of the Hudson's Bay Company. This would seem to indicate to the owner and master of the vessel, pretty clearly, that similar authority would be required to do such acts within the American Territory of Oregon, where we had then a duly organized Government.

The timber obtained was felled on the coast opposite the Island of Vancouver. The master of the vessel was probably induced to go there, because he could obtain timber on the coast, of as good quality as in Vancouver's Island, free of expense; while it appears, from the papers in the case, it could not be had from Vancouver's Island without the payment of compensation to the agents of the Hudson's Bay Company, who had a trading post and establishment there. He could also carry on trade with the Indians within the

American territories without any restriction as to dealing in furs.

The timber was cut at a point on the coast 180 miles by land from Astoria, the capital of Oregon, but a much further distance from it by water. Intelligence was received at Astoria of this trespass upon the territory of The United States and violation of its laws, and the vessel was ordered to be seized, and the proceedings were had which have caused the hardship complained of.

When the officers of the Government heard of this encroachment on the territory, what was to be done? It was probably not the first trespass of the kind, nor likely to be the last, unless prompt measures were taken for redress. It would hardly have answered to have warned off the "Albion," and permitted the matter to pass in this manner; and there seemed to be no other course to pursue than to seize the vessel, and follow the requirements of law. This was done. It is unfortunate that the consequences fell so heavily on the owner of the vessel, but it was not without the clearest fault on his part.

His excuse is, that the country was remote and unsettled, and the Government had been but newly established there, and was but little known. He regards the wrong done also as slight, and the punishment heavy.

It is further urged that the Government designed to extend clemency to the claimant, but unfortunately their instructions were not issued seasonably for this purpose. These circumstances address themselves to us with some force. At the same time, in considering any measure of redress the case may demand, we should inquire how far the Government has derived any benefit from the property seized; it should not be amerced in a penalty for enforcing necessary and important laws, which were palpably violated.

There are, also, some circumstances that might throw light on the case, which are unexplained. It does not appear but some security might have been given, and the vessel released without being subject to sale. The seizure was near the head-quarters of the Hudson's Bay Company,

who had full ability to aid the owners by bond or otherwise.

Further it does not appear who purchased the vessel, or what became of her. It may have gone back into the hands of the owners at a very reduced rate. There is a deficiency in the evidence in these respects, which might throw important light on the question of damage.

I am willing, however, on the case submitted, to comply with the spirit of the instructions issued by the department, and return to the owners the amount received from the sale of the vessel, and anything appertaining to her, and remit all damage for trespass on land and timber.

There is no reason why the Government, that has committed no wrong, should do more than this to a wrong-doer, and pay the owners of the "Albion" a large sum of money, which they now ask, to compensate them for the loss of the probable profits of the voyage, and for consequences necessarily arising from acknowledged illegal acts.

Mr. Hornby, British Commissioner:

Concurred, in the main, with the views presented. He regarded the measure of redress as harsh compared with the wrong committed. The Government had been but newly established—existed but in name; there were no officers, and no Custom-House; the acts complained of occurred in a remote and in a wholly unsettled country; they were not of serious damage, and the master of the vessel could have had no expectation that the consequences would be so severely visited upon him; moreover, he was ready to purchase, and endeavoured to find somebody of whom to purchase. There was no trading with the Indians, the articles being given them in exchange for their labour.

It also seemed to him that the Government officers, before proceeding to the condemnation of the vessel, ought to have obtained specific instructions from Washington; or, at least, have allowed sufficient time before proceeding to extremities, to have learnt the answer made to the application which had been transmitted.

He considered the Commission bound to carry out, at least, the measure of clemency awarded by the Government, and was of opinion that a sum in damages should be allowed, that should place the owner in as favourable a position as though the instructions of the Secretary had been received at Astoria, before the sale of the vessel, and was willing to submit this amount to the consideration of the umpire.

THE "ALBION."

London, December 1, 1854.

THE umpire awards to the owners of the ship "Albion," or their legal representatives, the sum of twenty thousand dollars on the 15th of January, 1855, to be paid by the Government of The United States.

JOSHUA BATES, *Umpire.*

Messrs. Rogers and Co.

Mr. Hornby, British Commissioner:

This claim is advanced on two grounds. The first, that the cargoes of rum, for alleged losses in connection with which the claimants now seek to recover compensation, were imported into the Colony of New Zealand *prior* to the assumption of the sovereignty of Great Britain over that island. The second, that these cargoes were made the special objects of an *ex post facto* legislation.

The first ground is untenable, as it is proved beyond all doubt that the British sovereignty of New Zealand was assumed and declared in the month of February, 1840, while the first of the cargoes did not arrive until the month of September in the same year; and that the second is equally so, a very superficial consideration of the facts in connection with the claim will show.

On examination of the Acts of the Legislative Councils of New South Wales and New Zealand, relating to the importation of spirits into the latter colony, it is perfectly manifest that the imposition of the duty of five shillings upon the rum belonging to Messrs. Rogers was authorized by law, and that had the law been directly enforced against Messrs. Rogers, their property might have been confiscated for an infraction of the revenue laws of the colony.

The claim, as originally presented by the American Minister in this country, was based upon the assumption that the rum had been landed in New Zealand before the assumption of British sovereignty. This ground must now, as I have already observed, be necessarily abandoned. I, therefore, confine myself for the present to the assertion that at the time of

the arrival no law was in force authorizing the imposition of duties.

In support of this proposition the claimants appear mainly to rely on an alleged decision of the Collector of Customs at Auckland, and their goods are spoken of as having been "adjudged" by him to be liable to no duty, and it is argued that the transaction must, therefore, be considered as complete, and the goods having passed into the possession of the consignees without duty having been collected, must be considered as discharged from further liability. There is, however, a clear misapprehension in supposing that the collector intended to express the opinion ascribed to him; but, even if this were not so, it is obvious that the opinion of a local Collector of Customs cannot have the effect of abrogating Acts of the Legislature, and, therefore, without further discussion on this point, I proceed to call attention to the dates of the material circumstances of the case, and to the various documents and Acts of Legislature having relation to it, all of which are to be found in the "parliamentary papers" to which Mr. Davis alludes.

It appears from the papers relating to New Zealand, submitted to Parliament (No. 311), that by letters patent under the Great Seal, bearing date the 15th June, 1839, Her Majesty enlarged the previously existing limits of the territory of New South Wales, and appointed Sir G. Gipps Governor. The extended territory was described as "including any territory which is, or may be, acquired in sovereignty by Her Majesty within that group of islands in the Pacific Ocean, commonly called New Zealand."

This extension of territory was announced by Sir G. Gipps, in New South Wales, by a proclamation, on the 14th January, 1840.

By Commission, bearing date 30th July, 1839, Captain W. Hobson was appointed Lieutenant-Governor over "such territory as might be acquired in sovereignty in New Zealand."

This was also announced in New South Wales by proclamation on the 14th January, 1840, and Captain Hobson

published these documents in New Zealand on the 30th January, 1840.

On the 6th of February, 1840, the Treaty of Waitangi was concluded, by which the islands of New Zealand were ceded to Great Britain, from which time they became a British possession, and a dependency of the Government of New South Wales.

On the 16th of June, 1840, an Act of the Legislative Council of New South Wales was passed, whereby "the laws and ordinances of the Governor and Legislative Council of New South Wales were made applicable to Her Majesty's dominions on the Islands of New Zealand."

By the Customs' laws then in force in New South Wales, a duty of six shillings per gallon was payable on all spirits imported into the Colony, and consequently this duty became payable on all spirits imported into New Zealand.

On the 15th of September this duty was by the Legislative Council of New South Wales raised to twelve shillings per gallon. This increased duty was applicable to the whole Colony of New South Wales, and the subsequent law, under which the duties were levied on Messrs. Rogers's goods, made a very large reduction in favour of importations into New Zealand.

The mere statement of these facts is a sufficient refutation of the assertion that "an intentional injustice was done in so laying the duty as to affect the claimants' property alone."

The other kindred assertion, that there was an "injurious enforcement" of the Act, will be dealt with hereafter.

In the month of September a small quantity of Messrs. Rogers's spirits (twenty-two casks) was landed on the Bay of Islands, and ninety casks were landed in October; according to the direct letter of the law, the duty of six shillings and twelve shillings per gallon might have been levied on these cargoes respectively.

It is probable that at that time no regular collection of Customs' duties had been made on the Bay of Islands, as it would of course be difficult at once to organize an efficient

system for the enforcement of the revenue law along the whole coast; but the fact of the laws of New South Wales having been made applicable to New Zealand was not only well known in the latter Colony, but their effect on the interests of American citizens in New Zealand had been made the subject of a special correspondence between The United States' Consul at Auckland and Sir G. Gipps, the Governor of New South Wales, immediately after the passing of the Act of the 16th June.

It is true that the American Consul put a construction upon the language used by Governor Gipps in that correspondence favourable to his view that The United States' citizens were to remain exempt from the operation of the Revenue Laws enacted by the British authorities; but it is evident that the other inhabitants of the Colony did not share this opinion, since it appears from the letter of Mr. W. H. Cross, master of the "Lydia," dated March 9, 1843, and which is given in evidence by the claimants, that buyers could not be found for the rum, because it was known that it would be liable to duty.

On the 13th October, an Act was passed by the Legislative Council of New South Wales, having for its special object to regulate the importation of spirits and tobacco in New Zealand, until the local Legislature, which it was anticipated would be established in that Colony, could take up the subject. As the provisions of this Act have an important bearing on the question under consideration, I set them out fully.

Act to regulate the Payment of Duties of Customs in Her Majesty's Dominions, in the Islands of New Zealand. 13*th October*, 1840, *No.* 19, 4*th Vict.*

Whereas by an Act passed in the present Session of the Legislative Council of the Colony of New South Wales, intituled an Act to declare that the laws of New South Wales extend to Her Majesty's Dominions in the Islands of New Zealand, and to apply the same, as far as applicable, in the

administration of justice therein, and to indemnify certain officers for acts already done, "it was enacted that all Laws, Acts, or Ordinances of the Governor and Legislative Council of New South Wales, which then were, or thereafter might be, in force within the said Colony, should extend to and be applied in the administration of justice within Her Majesty's dominions in the Islands of New Zealand, so far as the same can be applied therein. And whereas since the passing of the said Act (New Zealand) has been declared to be within the dominions of Her Majesty. And whereas (by 4th Vict., No. 11) increased duties have been imposed." And whereas it is expedient to suspend for a limited time the payment of all rates, dues, fees, and duties of Customs within the Islands of New Zealand. Be it therefore enacted by, &c., that until the 4th July, 1841, no fees or duties of Customs shall be charged, or payable, or paid on any spirits, wine, or other goods or merchandize within or imported into the said Islands of New Zealand, anything in the said recited Act or Acts to the contrary notwithstanding. And that from and after 4th July, 1841, all rates, dues, fees, and duties of Customs which now are, or then may be, by law charged, payable, and paid on all spirits, wine, and other goods imported into (New South Wales) shall and may also be charged, payable, and paid upon all New South Wales and other goods imported into New Zealand.

II. Goods imported into New Zealand, and thence exported to New South Wales, to be chargeable with duty in New South Wales, the same as if they had not been landed in New Zealand.

III. And be it enacted that nothing in this Act contained shall be held to entitle any person whomsoever to any drawback or exemption from any rates, dues, fees, or duties of Customs which may have been paid or demanded from such person in New Zealand under any law which may have been in force in New South Wales and its dependencies before this Act.

IV. After this Act, and until 4th July, 1841, it shall not be lawful for any person to *import* into New Zealand or to sell or dispose of, by wholesale, therein, any spirituous

liquors, without having previously obtained from the Government of the said Colony of New South Wales, or from the Legislative Government, a licence authorizing such person to import or dispose, under penalty of five hundred pounds: not to prevent publicans holding licence to sell retail, pursuant to laws and conditions of such licence.

V. Way in which licences to be granted.

VI. From passing of this Act till 1st January, 1842, any Officer of Customs may from time to time, take account of the quantity of spirituous liquors found in the stores of wholesale dealers or the premises of licensed publicans; and no wholesale dealer shall remove any part of such spirits without a permit, under pain of forfeiture thereof and penalty of ten pounds.

VII. Powers given to officers to enter premises of such dealers and publicans; penalties for obstructing five hundred pounds.

VIII. And in order that the true amount of duties payable on all spirits held by any licensed persons may be ascertained, be it enacted, all persons holding licences for the sale of spirituous liquors, whether wholesale or retail, shall between the 1st and 7th days of July, 1841, repair to the nearest Custom House, and there declare, on oath, the quantity in his possession, *and before the 14th July* PAY *all duty which would be chargeable on same, if imported after 1st July: if not paid liable to forfeiture; and any spirits subsequently found in the stores of such licensed person, or any* OTHER PERSON (*if more than ten gallons*), on which it is not proved that duty has been paid, shall be forfeited.

IX. Application of penalty.

X. Penalties and forfeitures, how sued for.

The effect of this Act upon the rum then imported into New Zealand was that all duties on it were suspended until the 1st day of July following, to give time in the interval for a change in the amount, if such change should be thought advisable; but, in order to secure an accurate account of the quantity then in the island, and which might afterwards be

imported, no sale or importation could legally take place without a licence.

In March, 1841, a third cargo of about forty-six casks of rum, belonging to Messrs. Rogers, was landed, and, as it would appear, *without any licence* having been obtained for so doing or for its sale; and this, together with the cargoes which had been previously imported, were stowed in the warehouse of Mr. Mayhew, the agent of Messrs. Rogers and Co., and also The United States' Vice-Consul at Auckland.

Upon hearing of this last importation, Her Majesty's Collector of Customs at Auckland notified to Mr. Mayhew that he would be subject to a penalty, under the Act of the Legislative Council of New South Wales of 16th June, 1840, if he removed any of the spirits in his possession.

Upon this, on the 28th April, Mr. Clendon, The United States' Consul, applied to the Colonial Government, and appealed to the letters he had received from the Governor of New South Wales, from which he thought it evident that the Customs' laws then in force in New Zealand did not refer to persons other than British subjects.

To this Governor Hobson, on the 8th of May, replied, that the letters of Sir G. Gipps were not intended to and did not prevent the application of Acts of Council as to spirits, which were passed for the protection of public morals.

Mr. Mayhew was nevertheless allowed to retain the goods in his own warehouse, in bond; but as he continued to insist, after the duty became payable, that his principals, as American citizens, were exempt from the operation of the Act, and declared his intention to disregard its requisitions, one of the sureties to the bond withdrew his name, and the goods were consequently removed to the Government warehouse.

This removal, however, did not take place until the 31st July, 1841, seventeen days after the rum had by law become *forfeited* for non-payment of duty.

On the 17th June the Legislative Council of New

Zealand passed an ordinance containing the following provisions:—

"§ 17. Be it enacted that from and after the 1st day of July next, there shall be raised, collected, and paid unto Her Majesty, for the public use of the said colony, upon goods, wares, and merchandizes imported into the Colony of New Zealand, the amount of duties of Customs, as the same are respectively marked, described, and set forth in figures in the table annexed."

In that table five shillings is declared to be payable upon every gallon of spirits.

By § 18, after reciting as follows, "Whereas in and by a certain Act of the Governor and Council of New South Wales, made and passed in the fourth year of Her Majesty's reign, intituled 'An Act to regulate the payment of the duties of Customs in Her Majesty's dominions in the Island of New Zealand, and which has been adopted and is intended still to be in force within the said Colony of New Zealand,' it is provided, etc.," certain amendments are made, not material to this case, and the section concludes thus, "And the said Act, in all other respects, is and shall be in force within the said Colony of New Zealand and its dependencies."

The goods of Messrs. Rogers, therefore, being in the island subsequent to the 14th July, 1841, *without* having paid duty, were, under the 8th section of the said Act of New South Wales, 4th Victoria, No. 19, liable to forfeiture; and the placing the goods in the Government warehouse after that date, which is represented as a grievance, instead of confiscating them, appears to me to have been *an indulgence* which there is no reason to suppose would have been accorded to a British subject.

The instances which have been collected of other spirits having been *landed* in New Zealand without payment of duty prior to the 1st of July, 1840, have no bearing on the question, because it will be seen that by the law then in force it was not necessary *to pay* the duty on them *immediately;* it *was only* necessary *that a licence* should be obtained for their importation or sale, and the duty would only be payable

after the 14th of July, 1841. Unless, therefore, it could be shown that any spirits found in the colony after the 14th July were not subjected to duty, no proof would be supplied that the law was unequally applied to the claimants' property. On the other hand, we have the positive statement of Governor Hobson and the Collector, that the law was impartially applied to British subjects, as well as the claimants.

The third proposition, that the law was enforced against the claimants before it came into operation, is also disposed of, inasmuch as the laws of New South Wales of 18th June, 1840, 13th October, 1840 (rendered specially applicable to New Zealand), and that of New Zealand of 17th June, 1841, were continuous in their operation, and made provision with reference to all spirits imported into the colony from a time long *anterior* to the first importation of Messrs. Rogers down to the time when the duty was levied upon their goods.

The fifth proposition, that the goods were imported before the territory was within the jurisdiction of the Government imposing the duty, is also shown to be without foundation, inasmuch as the Islands of New Zealand, immediately on their cession, became dependencies of the Colony of New South Wales by virtue of the sovereign Act of the Crown of the 15th June, 1839.

It is also shown that, even if it could be admitted, which it certainly cannot, that the payment of duty could not legally be required in respect of goods which had passed into the hands of the consignee without payment of the proper duty, such an admission would have no bearing on the present case, since the law of 13th October, 1840, did not require the duty to be paid until after the 1st of July.

The proposition also, that the British dominion was not complete till ratification by the English Crown of the cession of sovereignty, is met by showing that the cession was accepted by Governor Hobson and Sir G. Gipps, in pursuance of instructions previously given by Her Majesty; at the same time it cannot be doubted that, according to the

well-known maxim of law, a subsequent ratification would have given equal validity to the Acts of the Colonial Government, even if there had been no previous authority for them. It is, however, possible, and perhaps it is also to be considered probable, that the first two cargoes were shipped without knowledge of the assumption of the sovereignty of the Islands of Great Britain, and certainly without knowledge of the laws of the 16th of June.

The claim, therefore, so far as regards the first two cargoes, is evidently one on the *indulgence and sense of equity* in the British Government, and in that character I feel inclined to give it a favourable consideration.

The next matter, therefore, to be considered is the amount of compensation to which the claimants may appear to be entitled. Now, the obvious rule, as it appears to me, to be adopted in awarding compensation *as a matter of indulgence* is, that the party should not be compensated for the loss of profits, but be simply held harmless from positive loss; in other words, rendering this rule applicable to the circumstances of the present case, be put in the position of not having sent the cargoes, which the claimants may be held as not likely to have done had they known of the tariff charges.

In fairness, however, the claimants cannot be said to be entitled to compensation *for leakage or for cost of storeage* in the Government store, inasmuch *as it is* PROVED beyond all doubt that the leakage was occasioned by the removal to the Government stores, rendered necessary by Mr. Mayhew's surety having given notice to the Government to cancel his bond. Until that time the Government had allowed the rum to remain in bond in Mr. Mayhew's own stores; and it thus appears to have been his conduct in the matter which necessitated their removal and consequent damage.

So far as facts are concerned, it appears from Mr. Davis' statement, that the rum was bought in Boston at *less than* 1*s.* 2*d. a gallon*, and it was actually sold *for* 1*s.* 6*d. in New Zealand*, showing a profit, *exclusive* of freight and charges, of 4*d.* a gallon. If then the freight of rum per gallon from The

United States to New Zealand in 1840 did not exceed 4*d.* a gallon (and from inquiries I have made it does not appear that the freight would exceed this sum), the claimants have suffered *no loss at all*, as, for the reasons I have alleged, they cannot claim as for loss by leakage caused in the removal to the Government stores, or expense of storeage there. From the gross amount also of gallons imported, 1,823¼ gallons have to be deducted as leakage, unavoidably occasioned by this removal.

If then, on the residue of 16,822¾ gallons the freight and charges can be properly said to have exceeded 4*d.* a gallon, I am willing, as a matter of indulgence, believing the decision to be in accordance with that spirit of justice and equity contemplated by the two Governments, to allow the claimants the excess amount of freight and charges over and above that sum. As my colleague differs from me, and seems to think that the result, on this calculation, will not be sufficiently favourable to the claimants, the case must go to the umpire. So far, however, as I am concerned, if the umpire should, from his experience and knowledge, declare the freight in 1840 to have exceeded 4*d.* a gallon, I think they should be compensated to the extent of this excess; but if, on the other hand, the freight and charges did not exceed the sum of 4*d.* a gallon, which I believe will be found to be the fact, then it is clear, beyond all dispute upon the figures, that the claimants have not suffered any loss for which the British Government can, with any pretence of justice, be made answerable.

The American Commissioner did not deliver any judgment in this case, but simply dissented from the view taken of it by the British Commissioner.

Messrs. Rogers and Co.

London, December 7, 1854.

The umpire awards to Messrs. Rogers and Brothers, or their legal representatives, the sum of seven thousand six hundred and seventy-six dollars 96 cents on the 15th of January, 1855.

JOSHUA BATES, *Umpire.*

The "Only Son."

London, December 14, 1854.

The umpire reports that this claim is for loss and damage sustained by the owners of the schooner "Only Son," and cargo, in consequence of the illegal conduct of the Collector of the Customs at Halifax, Nova Scotia, in compelling the captain of the schooner to enter his vessel and pay a duty of five shillings per barrel on 825 barrels of flour, composing her cargo, when the intention of the captain was simply to report his vessel for a market, and proceed to some other place should circumstances warrant it. There has been much diplomatic correspondence between the two Governments on the subject of this claim, beginning in the year 1829; the result was, that the British Government agreed to pay whatever loss might have been sustained, provided the particulars of such loss were stated on oath. Such a statement was forwarded to the British Government, and the reply was, that no compensation would be granted. This statement on oath is not now to be found; the loss, however, is stated in the letters enclosing it, to be 1,000 dollars and 2,000 dollars. On the other side, the account sales of the flour at Halifax have been put in, and a certificate from most respectable parties at Halifax, to the effect that had the "Only Son" have proceeded to St. John's, Newfoundland, the state of that market was such that the flour would have netted less by two shillings and ninepence to three shillings per barrel than was actually realized at Halifax; on this ground, the British Government refused all compensation.

On examining the protest of the Captain, made at Halifax at the time, it appears that he never contemplated proceeding to St. John's, Newfoundland, but to a port in The United States in the State of Maine. It seems doubtful how much

loss was sustained; under these circumstances, the umpire awards the sum of one thousand dollars, to be paid by the British Government to the owners of the schooner "Only Son," and cargo, or to their legal representatives, on the 15th of January, 1855.

JOSHUA BATES, *Umpire.*

"THE GREAT WESTERN STEAM-SHIP COMPANY."

London, December 14, 1854.

THE umpire having been duly notified by the Commissioners under the said Convention, that they had been unable to agree upon the decision to be given with reference to the claim of the "Great Western Steam-ship Company," against the Government of The United States, so far as regards the question of interest on the sum of eleven thousand dollars, which they have agreed to award; and having carefully examined and considered the papers and evidence produced on the hearing of the said claim, and having conferred with the said Commissioners thereon, hereby reports and awards interest at the rate of five per cent per annum, from the 15th June, 1850, to the 15th January, 1855, amounting to the sum of two thousand five hundred dollars, making the total award thirteen thousand five hundred dollars, on the 15th January, 1855.

JOSHUA BATES, *Umpire.*

"Tigris and Seamew."

London, December 14, 1854.

The umpire having been duly notified by the Commissioners under the said Convention, that they had been unable to agree upon the decision to be given with reference to the claim of the owners of the "Tigris and Seamew," against the British Government, so far as regards the question of interest on the award of four thousand pounds to which they have agreed; and having carefully examined and considered the papers and evidence produced on the hearing of the said claim, and having conferred with the said Commissioners thereon, hereby reports and awards interest at the rate of three per cent per annum, from the 15th January, 1847, to the 15th of January, 1855, amounting to the sum of nine hundred and sixty pounds, making the total award four thousand nine hundred and sixty pounds, on the 15th January, 1855.

JOSHUA BATES, *Umpire.*

The "Lord Nelson."

Mr. Hornby, British Commissioner:

I am of opinion that Mr. Crook cannot recover, under the Convention of 1853, *the damages* to which he appears to me to be fairly entitled in respect of the capture of his schooner the "Lord Nelson," on the 5th of June, 1812, by Lieutenant Woolsey, of the United States' Navy, which seizure is admitted to have been wholly unjustifiable, being made in time of peace, and without probable cause of any kind.

The second section of the Convention declares "that no claim arising out of any transaction of a date prior to the 24th of December, 1814, shall be admissible under this Convention," and as it is clear that this claim arises out of a transaction which took place so far back as 1812, the Commissioners have no jurisdiction over it. I agree, therefore, with my colleague in rejecting it.

It so happens, however, that in connection with this claim, another claim arises out of a transaction subsequent to 1814, viz., in the year 1818, the consideration of which is, in my opinion, legitimately within the jurisdiction of the Commissioners; unfortunately, however, my colleague takes a different view, and an appeal to the umpire for his decision will be necessary. Putting on one side the right, under the present Convention, to recover *damages* against the Government of The United States in respect of the *seizure* of the schooner "Lord Nelson," and considering that as settled by the decision which Mr. Upham and myself have given—it appears as a fact—that without the knowledge of the claimants, and on an *ex parte* proceeding, the vessel and cargo were sold, and the money actually realized on the sale, being far less than the real

value, was deposited with the Clerk of the Court (Theon Rudd), to abide the event of any suit which might be commenced against the captor. After the war was over, a suit was commenced by, and decided in favour of, the claimants. Upon demanding, however, the proceeds of the sale, which the Clerk of the Court held in trust for the right owner, it was found that he had embezzled it. In respect, then, of the sum so embezzled by him, amounting to 4,971 dollars, quite irrespective of the damages which were the result of the seizure, the claimants appear to me to have a good claim upon The United States' Government, of which this Commission can take cognizance. This embezzlement is the transaction out of which this claim for 4,971 dollars arises; for the claim arising out of the transaction of the seizure—which I felt bound, in conjunction with my colleague, to dismiss—is for a much larger amount, and founded upon wholly different circumstances. The embezzlement by an officer of the court of money deposited with him to abide the event of a court determining who were the owners of it—which suit was commenced after 1814, namely, in 1817—is an entirely independent transaction, and has certainly in the present instance no relation to that which had reference to the seizure of the vessel by an individual without authority. In respect of this sum there was no claim on The United States' Government until after the court had indicated the owner of it in 1817, and the officer of the Government had absconded with it. The claim, then, for the first time, arose contemporaneously with the only transaction having reference to it, namely, the embezzlement which gave rise to it; and for this reason I am clearly of opinion it is within our jurisdiction, and without reference to any other case, and on its merits, entitled to our judgment.

I award accordingly to the claimants the sum of 4,971 dollars, with interest at five per cent from the month of April in the year 1818, when the clerk embezzled the money, making a total of 13,800 dollars.

As an authority for the obligation of a Government to indemnify individuals in respect of losses sustained by them

by reason of the defalcations of Government officers, I may cite that recently afforded by the English Government in the case of the Registrar of the Court of Admiralty, the first sum awarded being to an American citizen.

In this case Mr. Upham did not deliver any judgment.

The "Lord Nelson."

London, December 14, 1854.

The umpire reports that the schooner "Lord Nelson" was captured on the 5th June, 1812, thirteen days before the declaration of war, by The United States' brig "Oneida," Captain Woolsey, on Lake Ontario, for an alleged breach of the Embargo Laws. The vessel was taken to Sackett's Harbour, where, after war was declared, the schooner and cargo were condemned and the proceeds paid into court. When peace was made, the owners of the "Lord Nelson" and cargo claimed their property, as captured in time of peace, and proceedings were permitted in the Court of The United States, and a decree passed ordering the proceeds of the vessel and cargo, amounting to 4,971 dollars, to be paid over to the claimants, when it was found the officer of the court, whose business it was to take care of the money, had absconded, leaving no assets. A petition was afterwards presented to the President of The United States, who pressed this claim on the attention of Congress, but no appropriation was made.

The period when the transaction took place, which is the foundation of this claim, places it without the jurisdiction of this Commission.

No compensation can, therefore, be awarded to the owners of the "Lord Nelson."

JOSHUA BATES, *Umpire.*

Florida Bonds.

Mr. Hornby, British Commissioner:

This is a claim advanced by certain holders of bonds issued by the Government of the territory of Florida, in the year 1833, payment of which is now claimed against The United States' Government, under the Convention of the 8th of February, 1853.

It appears that Florida was ceded, under a Treaty, by Spain to The United States, in the year 1819, and The United States assumed the sovereignty as the crown of Spain had held it, and also became possessed of such part of the land as had belonged to the crown, not merely in sovereignty, but as the possessors in absolute ownership. By the sixth article of the Treaty, it was arranged that the inhabitants of the territory should be incorporated in the Union, as soon as was consistent with the principles of the Federal Constitution, and admitted to all the privileges and rights of citizens of The United States. Previous, however, to its admission as a State of the Union, the Territorial Government appointed by Congress incurred certain liabilities; and the question we have now to consider is the position of the Federal Government, under the circumstances to which I shall presently allude, with regard to these debts.

To do this effectually, it will be necessary, in the first place, to examine the nature of the Government of the Territory of Florida, and its relation to the Federal Government of The United States.

The vast tracts of country belonging to The United States, not comprised within the limits of the several States

of the Union, are subject to the absolute government of Congress. An exclusive and unlimited power of legislation for these territories is conferred upon Congress by the constitution, and has been sanctioned by repeated decisions of The United States' Courts. So complete is the dominion of Congress over the territories, that it has even excited anxiety in the minds of eminent Americans, as being inconsistent in spirit with the republican institutions of the country. Chancellor Kent has the following observations on this subject:—

"It would seem from these various congressional regulations of the territories belonging to The United States that Congress have supreme power in the government of them, depending on the exercise of their sound discretion. That discretion has hitherto been exercised in wisdom and good faith, and with an anxious regard for the security of the rights and privileges of the inhabitants, as defined and declared in the Ordinance of July, 1787, and in the constitution of The United States. 'All admit,' said Chief Justice Marshall, 'the constitutionality of a Territorial Government.' But neither the district of Columbia nor a Territory is a *State* within the meaning of the Constitution, nor entitled to claim the privileges secured to the members of the Union. This has been so adjudged by the Supreme Court. Nor will a writ of error or appeal lie from a Territorial Court to the Supreme Court, unless there be a special statute provision for the purpose. If, therefore, the Government of The United States should carry into execution the project of colonizing the great Valley of the Columbia, or Oregon River, to the west of the Rocky Mountains, it would afford a subject of grave consideration, what would be the future civil and political destiny of that country. It would be a long time before it would be populous enough to be created into one or more independent States; and, in the meantime, upon the doctrine taught by the Acts of Congress, and even by the judicial decisions of the Supreme Court, the colonists would be in a state of the most complete subordination, and as dependent upon the will of Congress as the people of this country would

have been upon the King and Parliament of Great Britain if they could have sustained their claim to bind in all cases whatsoever. Such a state of absolute sovereignty on the one hand, and of absolute dependence on the other, is not congenial with the free and independent spirit of our native institutions; and the establishment of distant Territorial Governments, ruled according to will and pleasure, would have a very natural tendency, as all pro-consular governments have had, to abuse and oppression."

Mr. Justice Story, in his "Commentaries on the Constitution," Sec. 1328, says:—

"The power of Congress over the public territory is clearly exclusive and universal, and their legislation is subject to no control, but is absolute and unlimited, unless so far as it is affected by stipulations in the cessions or by the Ordinance of 1787, under which any part of it has been settled."

Not only, however, does the right of *government* belong to Congress, but The United States *also own the soil of the immense* tracts of unsettled lands throughout the territories, and the funds derived from the sale of these lands are at the absolute disposal of the national Government, and are applied to national purposes. "The Constitution," says Chancellor Kent,"* "gave to Congress the power to dispose of and make all needful rules and regulation respecting, the territory or other property belonging to The United States, and to admit new States into the Union. Since the constitution was formed, the value and efficiency of this power have been magnified to an incalculable extent by the purchase of Louisiana and Florida; and, under the doctrine contained in the cases I have referred to, Congress have a large and magnificent portion of territory under their absolute control and disposal. This immense property has become national and productive stock, and Congress, in the administration of this stock, have erected temporary Governments under the pro-

* 1 Kent, 276.

visions of the Ordinance of Congress, under the confederation, and under the constitutional power." "On the other hand," says Mr. Justice Story,* "the public lands hold out, after the discharge of the national debt, ample revenues, to be devoted to the cause of education and sound learning, and to internal improvements, without trenching upon the property or embarrassing the pursuits of the people by burdensome taxation. The constitutional objection to the appropriation of the other revenues of the Government to such objects has not been supposed to apply to an appropriation of the proceeds of the public lands. The cessions of territory were expressly made for the common benefit of The United States, and therefore constitute a fund which may be properly devoted to any objects with and for the common benefit of the Union."

In a word, the territories are declared by the third section of the fourth article of the Constitution, to be the "property" of The United States, and as such are placed under the absolute disposal of Congress.†

Congress might, if it so pleased, govern the various territories directly and without the intervention of any local machinery; and it does, in fact, so govern the District of Columbia, which is in the same situation as the territories. In so governing Columbia, it has been held by judicial decision that Congress does not act merely as the Government of that district, but as the Government of the whole Union; and the same rule is applicable to the Government of the territories.‡

It is, however, impossible for Congress to govern all its many and distant territories directly in the same way that it governs Columbia; it is, therefore, compelled to delegate its authority to officers appointed for the purpose; it reserves to itself, however, the full power not only of repealing, modifying, or altering the acts of the local and temporary Government which it may have erected, but it may "at any time

* Story on the Constitution, sec. 1327.

† Const. art. iv. s. 3, div. 2.

‡ State *v.* New Orleans Nav. Co. 11 Martin 313.

abrogate and remodel the Legislature itself, and all the other departments of the Territorial Government."*

I have thought it necessary to go thus fully into the nature of the relations of the territories to the Federal Government, and to quote, *in extenso*, the language used by the most eminent American authorities on constitutional law with reference to this subject, because the learned United States' Agent has relied chiefly, in his argument, on the assertion (for which, however, he has given no authority), that the Territorial Government was "as sovereign within its sphere as The United States or any other State." It is evident, however, from the passages I have cited, supported by numerous judicial decisions, that the Territorial Government has no attribute of sovereignty, but is, at all times, even when acting within the sphere of the powers conceded to it, subject to the authority and control of Congress.†

In the exercise of the unlimited powers belonging to it, Congress established, in 1822, a Territorial Government in Florida,‡ consisting of a Governor, assisted by a Legislative Council, appointed by the President of The United States. The powers of the Governor and Council extended to all rightful subjects of legislation; but the condition was imposed that all laws should be submitted annually to Congress for its approval, and that, if disapproved, they should thenceforth be of no force.

In 1826, an alteration § was made in the mode of appointing the Legislative Council, which was made elective, but in other respects the Territorial Government remained the same.

From an early period in its existence the Territorial Government created a great number of corporations for various public purposes. The laws establishing these corporations were duly submitted to Congress; some of them

* Attorney-General Butler, Opinions of United States' Attorney-General, p. 1006.

† See the judgment of Mr. Senator Sharman, Williams *v.* Bank of Michigan, 7 Ward 554.

‡ 7 Laws U. S. 16.

§ 7 Laws U. S. 470.

were disallowed, while others were permitted to pass, after having been the subject of discussion in that body.

Amongst those Acts of Incorporation which were the special subject of consideration in Congress, was the one establishing the "Union Bank of Florida" (1833). This Act, however, though declared by a committee of the Senate to contain some objectionable provisions, was permitted to pass without amendment.

It is not necessary to trace the action of Congress on this and the various other charters granted by the Territorial Legislature, because it is not, and could not be, denied that Congress has, in the most complete manner, authorized and ratified the various acts of the Territorial Legislature relating to the corporations whose bonds are now before us, and the discussion has entirely turned upon the extent to which Congress is affected by having given such authority and ratification.

Let us now see what was done under the "Union Bank" Charter. The object of this and the various other Acts of Incorporation appears to have been to obtain the introduction of capital into the Territory for the general public benefit. In the case of the Pensacola Bank Bonds the object was to construct a railroad which it was thought would be advantageous to the Territory. For similar public purposes the "Union Bank" was empowered to raise a certain capital by *means of a loan on the faith of the Territory.* The mode of carrying this out is thus prescribed by the Act of Incorporation :—

"To facilitate the negotiation by said Bank for the said loan of one million of dollars,* *the faith of the Territory is hereby pledged for the security* of the capital and interest, and that one thousand Bonds of 1000 dollars each—viz., 250 bonds payable in twenty-six years, 250 bonds payable in twenty-eight years, and 250 bonds payable in thirty years, and bearing interest at a rate not exceeding six per cent. per annum,—shall be furnished to the order of the 'Union Bank of Florida,' signed by the Governor and counter-

* Gilpin, 14.

signed by the Treasurer, and under the seal of the Territory. Such bonds to be in the following words:—'One Thousand Dollars. Know all men by these presents, that the Territory of Florida acknowledges to be indebted to the Union Bank of Florida, in the sum of 1000 dollars, which sum the said Territory promises to pay in lawful money to The United States, to the order of the President, Directors, and Company of said Bank, on the —— day of ——, 18—, with interest at the rate of —— per annum, payable half-yearly at the place named in the endorsement hereon, viz., on the —— day of —— and on the —— day of —— of every year until the repayment of the said principal sum. In testimony whereof the Governor of the Territory of Florida hath signed and the Treasurer has countersigned these presents, and caused the seal of the Territory to be affixed thereto at Tallahassee, this —— day of —— in the year ——. —— Governor; —— Treasurer. —— (Seal.) The said Bonds may be transferable by the endorsement of the President and of the Cashier of the said Bank, to the order of any person whomsoever or to the bearer, and the said endorsement shall fix the place where the said principal and interest shall be paid.'"

Several series of bonds, in the form prescribed by the charter, were issued in America and elsewhere.

The greater number were negotiated in London, and the present claimants, amongst others, advanced their money on the security of the bonds which are now the subject of consideration.

Up to the 1st July, 1841, the interest on the bonds was duly paid at the times and places appointed; but from that date to the present time no payment whatever has been made on account of them, and the corporations have become completely insolvent. Upon this, payment of the interest on the Bonds was sought to be obtained from the Territorial Government in accordance with the terms of the Bonds; but the claim was refused, and in 1842 the Territorial Legislature passed resolutions declaring that the Governor and Council were "never invested with authority to

pledge the faith of the Territory so as to render the citizens responsible for the debts or engagements of any corporation chartered by the Territorial Legislature." The revenue laws of the Territory were also suspended, "so far as they authorized the assessment and collection of a Territorial Revenue in future," with certain specific exceptions. These acts of the Territorial Legislature were submitted to Congress, and were permitted to pass into law without disapproval.

From this time, then, until the admission of Florida into the Union as a State, the Territorial Legislature persisted in its repudiation of the engagements contracted on the Bonds; and although the subject was repeatedly brought before Congress in various ways,—in some cases by memorial of the bondholders praying for relief,—no action of Congress took place, and the bondholders remained without redress.

Let us pause for a moment, to consider what the position of the bondholders and Congress would have been had the facts already stated constituted the whole case.

The bondholders advanced their money on an engagement entered into by the agents duly constitued by Congress for the government of that Territory, for the payment of money by the Territory; such engagement being sanctioned by Congress, its acquiescence in the passing of the Bank Act having induced the public, in the language of Mr. Chancellor Kent, to invest property and make contracts upon the faith and validity of the charter. The Territory acknowledged itself to be indebted in the amount of the bonds, and the "faith of the Territory" was pledged for the repayment. Now what is the meaning of a Territory or State acknowledging itself to owe a debt, and pledging its faith for the liquidation of it? It plainly means this—or it means nothing: that the governing power engages that the revenue, resources, and property of the Territory or State are pledged for the debt and shall be applied to its discharge. In other words, an obligation was created on the part of Florida by the Executive as the agent of the sovereign power, and by the Legislature as the agent of the people, which was sanc-

tioned by Congress, to pay the debt—that obligation in fact operating on all the property of the Territory of Florida.

It has been already shown that the Government of the Territory was at the absolute disposal of The United States (represented by Congress), in whom the right of eminent domain was vested, and that Congress assented in the fullest manner to the pledge which was given by the Territorial Government. There was then an engagement to apply the resources of the Territory for the payment of a debt incurred with the assent of the sovereign power. Upon this state of facts it is obvious that if those principles of equity which are binding on individuals be applicable to States, it became the duty of Congress to see that the funds which it had permitted to be pledged should be applied to the discharge of the debts they were intended to secure, and the bondholders were entitled to call upon The United States' Government to cause those funds to be applied to their relief, or to indemnify them from loss arising from the failure to do so.

The duty of thus protecting the interests of the bondholders was the more incumbent on Congress from the fact that by reason of its being the owner of by far the greater portion of the soil of the Territory, it was the party most benefited by the introduction of the bondholders' capital into the Territory.

But if the position of the bondholders was such as I have stated it to have been while Florida continued a Territory, it will be found that their claim assumed an entirely new form, and acquired immeasurably more force, from the moment that the Territory was admitted to the Union as an independent State.

This admission took place on the 3rd March, 1845.

By the second section of the eighth article of the Constitution of the new State, which received the assent of Congress, it was declared that "No other or greater amount of tax or revenue shall at any time be levied than may be required for the necessary expenses of Government."

By the introduction of this clause into the Constitution,

Congress appears to have designed to lend effect to the repudiating resolutions of the Territorial Legislature to which it had already given its assent.

It has indeed been denied, in the course of the argument, that this clause was intended to have, or had, the effect of preventing the State from raising revenue in order to pay the debts of the Territory; but if any doubt could exist on this point, it must be removed by the fact that those best able to judge of the meaning of the Constitution of Florida, and having the power to enforce its own interpretation, viz., the Legislature of the State, have declared that they are precluded by the article of the Constitution in question from levying any tax to provide for the payment of the interest or principal of these Bonds, or from entering on any consideration of the question at all.

It was then, when Congress admitted the insertion of this clause with a full knowledge of the injustice it would work, that the power to pay was taken away from the State that was then being called into existence; but this was not all: for the power which had hitherto been vested in Congress by virtue of its very sovereignty, whenever it chose to exercise it, to compel a Territory to observe the obligation of a contract, or to do that which it was legally and morally bound to do, was also divested by the change thus effected in the form of the Government of Florida. And by whom, if not by Congress, which first by its acquiescence in the law establishing the Bank, and secondly by the permission granted to its agents to pledge the faith of the Territory over which it had a sovereign and complete authority, had induced these loans upon the promise of repayment by the Territory, which repayment, with full knowledge of the insolvency of the corporations and the immediate pressing liability of the Territory, it has thus rendered impossible.

The argument of The United States' Agent has been directed to show that the Territory alone was originally liable on these bonds, and that that liability has been transferred to the *State*. It is due to the learned counsel to say that nothing could be more candid and complete than his dis-

avowal of those doctrines of repudiation which the Territorial Legislature propounded, and he states a very confident hope that the public opinion of America will compel the State of Florida to do justice to the present claimants. But by whose act is it that the bondholders have only that prospective operation of public opinion to look to for their relief?

It being conceded then that the Territory owed the debt, it follows that it was legally bound to pay it. The Territory in its corporate capacity was the debtor, and might have been sued before a competent tribunal. Whether any of the ordinary courts of law in The United States could have entertained the claim, I am not able to say. The opinion of an American jurist has indeed been produced, to the effect that the Territory could have been sued in The United States' Courts; but it is immaterial to consider this point, for whether it be so or not, Congress, the sovereign power, had, undoubtedly, the right and the means of compelling the Territory to discharge its obligations. There was then a competent tribunal before which the Territory could be summoned, and by which it might have been adjudged to pay its debts. It matters not, in principle, whether that tribunal was one of the ordinary judicial ones or not. All judicial authority is but the exercise of the sovereign power directed to the object of securing that right be done within its jurisdiction. Where a direct appeal to the sovereign power is proper, it ought to be, and is, as efficient a means of obtaining the redress of a grievance, as an appeal to the ordinary court of judicature. Such an appeal, under the name of a Petition of Right, is, in this country, the established mode of administering justice where the Crown is the party complained against. It cannot be presumed that an appeal to Congress, to compel its dependencies to perform the contracts it had authorized them to enter into, would have been either inoperative or valueless.

While, then, Florida remained a Territory, the means existed of compelling it to perform the contracts entered into in its name; but from the moment that it became a State the

creditors of the former Territory were deprived of all means whatever of enforcing their just demands.

For the State of Florida, to whom it is said the debts of the Territory have been transferred, cannot be sued by the creditors, for the Constitution expressly enacts that no State can be sued in The United States' Courts, and of course a State cannot be sued in its own courts.

Nor can Congress compel Florida to pay its debts, for it is an independent State, and cannot be coerced by the others, either singly or collectively, into doing even that which is its duty.

And lastly, not only has Congress, by admitting Florida as a State, deprived the creditors of the means of enforcing their rights, but it has bestowed upon the State a Constitution which actually prevents it from paying its debts.

It is a mockery, under these circumstances to refer the bondholders to the State as their debtor. What difference is there in principle between confiscating a debt, and rendering it impossible that payment can be enforced on the one hand, or voluntarily conceded on the other?

It is not for individuals to pronounce an opinion on the policy of The United States in thus starting one of its children in its political manhood, incapacitated from discharging the debts which it had incurred during infancy for its own and its parents' benefit. There may have been better reasons than I am acquainted with for relieving the State of Florida from the burden of the obligations created by the Territory; but it has long been a settled principle of legislation in all civilized nations, that no public advantage is to be attained by the destruction of private interests, without compensation being made to the individuals injured. If it was for the general good that the inhabitants of Florida should not be taxed alone for the payment of money advanced to their former Government, justice imperatively requires that the repayment of the money should be provided for from national sources.

It has indeed been suggested that as it is in the power of the State of Florida at some future time to change its Constitution, so as to enable it to raise revenue for the payment

of these bonds, that it cannot be said that the bondholders are deprived of a remedy. But we have to deal with the case upon existing facts, and not upon possible though highly improbable contingencies. Such an argument would equally apply if the claim were a direct one upon The United States, and payment had been rendered impossible by a clause in The United States' Constitution. Or suppose that an article of the Union between England and Ireland had been inserted prejudicial to the existing interests of an American citizen, would it be a valid answer for the Government of the United Kingdom to say that the Imperial Parliament might possibly at a future period repeal the obnoxious clause, and restore The United States citizen to his former position?

The debt then is at present practically confiscated. This is the wrong which is complained of, and we have to determine whether it is one for which The United States is answerable. The possibility of a better state of public opinion inducing the inhabitants of Florida at some future time to remodel their Constitution, so as to rescind the existing confiscation, cannot affect the rights and liabilities arising out of the present state of facts.

The principal arguments advanced in opposition to the claim which I have not already incidentally adverted to are these:—

1. That Congress having only the powers enumerated by the Constitution, can do no more than is to be found within that document, and that the power to pay the debts of a Territory is not specified or to be implied.

2. That Congress had not the power of rejecting the clause of the Constitution of the proposed State of Florida, which forbade the collecting of revenue for any other purpose than the necessary expenses of Government, but that it was bound to admit the new State with this clause in its Constitution, however objectionable it may be.

The first of these objections tends to raise a discussion on a point which has long been definitively settled in The United States.

In the first place, it assumes the whole question at issue

in this case. If The United States have by the Acts of Congress incurred an obligation to indemnify the present claimants, then a debt has arisen, and Congress has express power to levy taxes in order to pay its debts. I presume that it is not necessary to show by argument that a technical meaning is not to be attached to the word "debts," but that it signifies any pecuniary claim—whether for a sum certain, or for unliquidated damages. But, secondly, the Constitution only prescribes the purposes for which *taxes*, etc., are to be levied; it is wholly silent as to the appropriation of national funds arising from other sources, such as the sale of public lands; and it has been shown that this is a source of revenue which is peculiarly proper to be applied to the relief of the present claimants. And lastly, the Constitution has never been construed in The United States in the narrow spirit in which it is now sought to interpret it. It is fully established by Mr. Justice Story, in his "Commentaries on the Constitution," book 3, ch. 14, that Congress has full power to apply the funds of the nation, from whatever source derived, to all purposes which they may deem national.

That learned writer concludes his remarks with these words:—"In regard to the practice of Government, it has been entirely in conformity to these principles. Appropriations have never been limited by Congress to cases falling within the specific powers enumerated in the Constitution, whether those powers be construed in their broad or narrow sense. And in an especial manner appropriations have been made to aid internal improvements of various sorts, in our roads, our navigation, our streams, and other objects of a national character and importance. In some cases, not silently, but upon discussion, Congress have gone the length of making appropriations to aid destitute foreigners and cities labouring under severe calamities, as in the relief of the St. Domingo refugees in 1794, and the citizens of Venezuela, who suffered from an earthquake in 1812." So also in the case of three cities in Columbia—Washington, Georgetown, and Alexandria—Congress assumed the debt which these cities had incurred, and for the liquidation of which their

public faith had been pledged; and the Secretary of the Treasury was ordered to pay it.

It is a misapprehension of the power of Congress to suppose that it was bound to admit the Territory of Florida to the Union without any discretion as to the terms upon which the admission was to take place. The time and mode of admission were entirely for Congress to determine. Mr. Justice Story, in his "Commentaries," sec. 1321, shows that precedents and judicial decisions "have established the rightful authority of Congress to impose restrictions upon the admission of new States." But, without citing authorities, it is obvious that Congress cannot be regarded as having merely administrative functions on such admission, to record the event without control over it. It would be powerless to discharge the most important of its functions as the guardian of the national interests, if it were bound to admit every new State, with any Constitution its inhabitants might think fit to propose for themselves, however inconsistent it might be with the general welfare of the Union, with private morality, or with public honour.

It will not be necessary to examine the history of the "Pensacola Bank" and the "Southern Life Assurance Company," whose obligations were also guaranteed by the Territorial Government. As against that Government, the claim of the holders of the Pensacola Bank Bonds is strengthened by the circumstance that that Company gave the Territorial Government very considerable security on real and personal property against the liability which was incurred by pledging the public faith. The claim, however, as against The United States' Government, is the same in each case.

I am of opinion, therefore, upon these facts, that The United States' Government is bound to pay to the British subjects hereunder enumerated, the principal of the Bonds of which they are the holders when the same shall become due, and to pay to them forthwith the arrears of interest on such Bonds, with interest at five per cent on such arrears, up to the 14th September, 1854, amounting in the whole to the sums set opposite their names.

Mr. UPHAM, United States' Commissioner:

I HAVE listened attentively to the arguments urged in this case, but have been unable to see any just grounds on which the claim is based.

To sustain the claim, one of two propositions must be maintained—either that the act of the Territory of Florida pledging her credit, originally bound The United States; or, that Congress subsequently approved and sanctioned the law of the Territory, so as to make it obligatory on the whole people of the Union.

I. Could the Territory of Florida bind The United States' originally by her acts?

This depends entirely on the power vested in her as a Government. Florida had been originally colonized by Spain, and had long been subject to her authority. It was ceded by that Power to The United States, on the 22nd of February, 1819, with a provision that it "should be incorporated into the Union as soon as should be consistent with the principles of the federal Constitution."

The power of holding Territories is evidently given to the general Government. The Constitution of The United States provides that Congress shall have power "to make all needful rules and regulations respecting its Territories."

The course of proceeding by Congress in such cases has been to constitute, within any given Territory, whenever the number of inhabitants will justify it, a territorial government, with power to establish its own laws, subject only to such reservations and restrictions as are specifically named in the charter bestowed upon it.

The governor of Territories has been uniformly appointed by the President of The United States; and, in some instances, for a short time, a territorial council has been appointed in the same manner, having the usual powers and authority of a legislature.

A council was appointed in this manner in Florida, until

1826, when it was provided that the inhabitants should elect their territorial council, or, in other words, their legislature, annually.

By the act constituting the Territory of Florida, the governor was invested with the powers of a chief executive magistrate; and the council, or legislature, was authorized, in express terms, "to legislate on all rightful subjects of legislation," provided that its laws were to be reported to Congress annually, and "if they were disapproved by Congress, they were thenceforth to be of no force."

Under the authority thus conferred, courts were established having the highest civil and criminal jurisdiction; and her own laws, within her own jurisdiction, subject only to the Constitution of The United States and the negative of Congress, constituted the supreme laws of the Territory.

Florida exercised under this charter all the ordinary powers of a Government. She regulated her own policy, assessed her own taxes, granted numerous acts of incorporation, and established various institutions deemed essential to her welfare and prosperity, until 1835, when she passed the acts under which the indebtedness of the Territory was incurred.

Can The United States be said to have enacted either of these laws, or to be holden, as a Government, responsible for the payment of the obligations created by them? No evidence has been shown to sustain such a proposition, and no theory of government countenances it. Various suggestions have been thrown out as bearing on this point, to which we propose to advert.

One suggestion which has been made is: *That the Governor of Florida was appointed by the President of The United States.*

In like manner the governors of every province of Great Britain are appointed by the crown; but it was never understood that such provinces had not full power of enacting valid, binding laws, within their constituted sphere of action, to the same extent as other Governments.

It is wholly immaterial, in this respect, how the chief

executive magist ate of a province, or the other branches of its Government are appointed. When constituted, they form the Government of the province, with the ordinary rights, duties, and powers of a Government. One of the very least of these powers is the capacity to contract debts in aid of the functions for which it was constituted. Each government possesses this power as one of its attributes, in common with every other public or private corporation, except so far as it may be expressly restricted in its exercise by some organic or other law, and no such law is here intimated or pretended.

Another suggestion made is: *That the laws of Florida might be disapproved by the general Government.*

But this does not make the laws of the Territory the laws of the Union, or bind the Union to the obligations they impose. Such laws, when approved, only operate on the people of Florida. They have no power beyond her limits. If disapproved, they are a mere nullity. The power of approval of colonial laws before they take effect has always existed in the crown of Great Britain from her earliest territorial acquisitions, and in every other Government having colonies or subordinate possessions. The laws made by the colonies are, notwithstanding, their own laws, and have never been holden to bind the mother country.

The capability of incurring debts for certain objects ordinarily exists in parishes, towns, cities, counties, &c.; and though they may be under the control of the general government, their contracts, and the debts incurred by them, are nevertheless their own. A different doctrine would confound all principles of just and accurate responsibility, and would seriously impair the advantages devised, through a variety of subordinate organizations, to secure the essential ends of good government.

Again it is said: *That the lands belonging to The United States within the Territory of Florida were not liable to be taxed.*

This is so. The public lands, however, of The United States are graduated at a price best calculated to insure their rapid settlement, and they become at once liable to taxation

on their being sold and improved. The same policy exists in other Governments. Public lands and public property are nowhere taxed; but such an exemption was never construed to render the general Government liable for the debts of any town, county, or province within which such lands or property might be situated.

It has been also said, and numerous authorities have been cited to the point: *That the original power of the general Government over the public territory was absolute and unlimited.* So the people of The United States had originally unlimited power to adopt the form of government they preferred; and they may still change and modity their Constitution at pleasure, but this does not alter the facts as to the binding character of the acts of the Government when once established.

The United States has chosen to extend to her territories, in the outset, the right of self-government, and has intrusted them, as in the case of Florida, with powers "to act in all rightful subjects of legislation." This power once granted is complete. From thirteen original States, the Union has thus extended to thirty-one States, formed mostly from new territories, each of which is wholly independent of the other, as to the contracts and liabilities they may make, and the legislation they may adopt, saving only their obligation to the general Constitution of the Union. The government of a territory does not depend so fully and perfectly on the action of its own people as that of the individul States, but its laws, once enacted and not disapproved, have precisely the same binding power and efficacy, within its limits, as those of a State. No one of these suggestions to which we have adverted, or the whole combined, tend to show that the acts of Florida are the acts of the general Government, or that her responsibilities are the responsibilities of the American people.

II. It remains to consider the second point raised, whether Congress subsequently approved and sanctioned the local law of Florida, so as to make it a provision binding generally on the people of the Union. It is not contended that this local

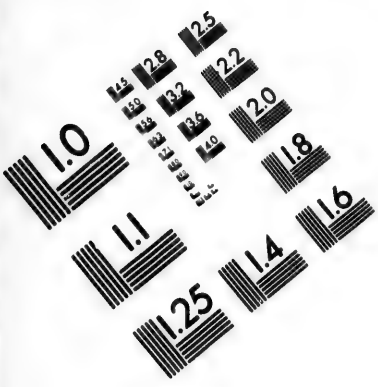
law was adopted, or liability incurred by any indirect act of the general Government assuming the debt. It is said, however, that the Government has rendered itself liable for its payment, because she admitted Florida into the Union as a State without first compelling her to make payment of these debts.

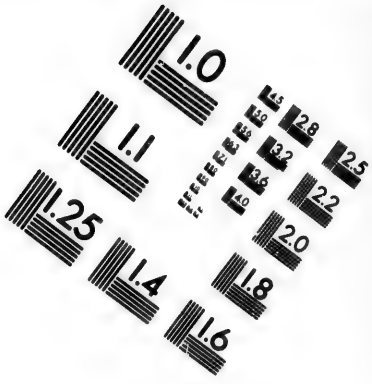
The argument proceeds on the ground, that The United States cannot admit a portion of its territory into the Union while in debt, without becoming responsible for such indebtedness. It asserts, in substance, the principle that whenever the Government has it in power, by the conditional denial of any privilege, to compel a territory to make payment of a debt, it must insist on such compulsion, or it shall be holden to have assumed such debt.

This is a new responsibility imposed on Governments.

It is quite clear to me, on the other hand, that The United States might well assume the position that she had nothing to do with the contracts, between her territories and individuals, and that it is not a part of her duty to constitute herself into a judicial tribunal to pass upon the pecuniary relations existing between them. Florida might well contend that this should not be done, and that she will not be dictated to, or interfered with, by The United States on the subject.

But this point is put still stronger. It is said that a provision was inserted into the constitution of Florida, preparatory to her admission as a State, "that no other or greater amount of tax or revenue shall at any time be levied, than may be required for the necessary expenses of Government," and it is contended that this provision expressly prohibits the payment of any prior existing debt; and, that The United States, by admitting Florida into the Union, with such a clause in her Constitution, became accessory to the wrong done, and should be holden responsible for it. But this is a far-fetched construction of the clause in question, and forms altogether too remote a claim to impose a legal pecuniary liability. The most necessary expenses of a Government are the payment of its obligations as they fall due. It can hardly be pretended, if a tax should be assessed by the State of





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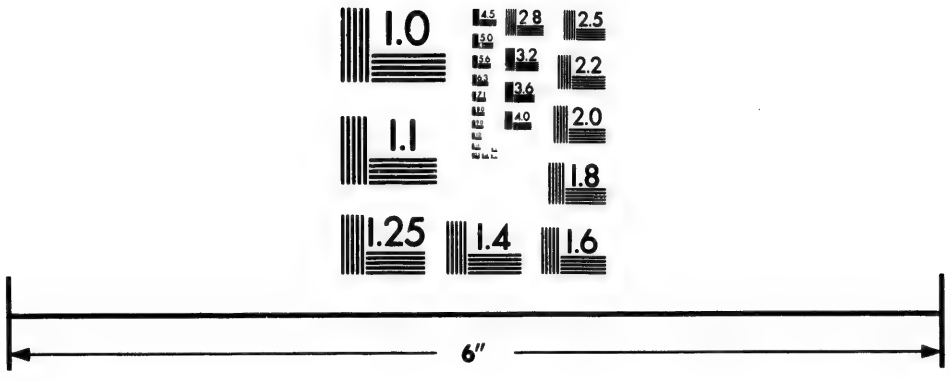

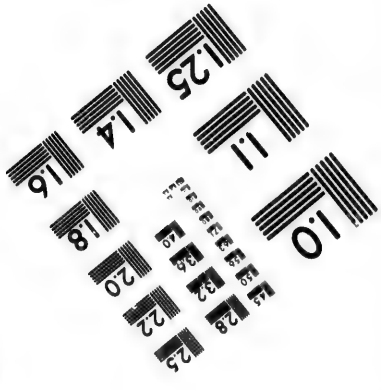

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Florida upon its citizens, to raise funds to meet such obligations, that an individual could resist payment of such tax on the ground that it was unconstitutional. No court would give such a construction to this provision of the Constitution, and unless we hold that such would necessarily be the decision of the Court, then the objection is without foundation, and constitutes no ground for the assertion that The United States, by admitting Florida into the Union with this provision, should be held to have assumed the debts of the territory.

But whether such be the interpretation of the clause in the Constitution or not, the inference attempted to be drawn from it would not follow. If Florida has repudiated her debts for any cause, it was her act, and it was not incumbent on The United States to compel her, by any denial of the ordinary right of admission into the Union, to pay such debts. She had no more rightful control over the acts of a Territory so situated, than she had over a State.

The creditors of the Territory had no power, either legal or moral, to interpose any such bar to her admission. It is not a remedy for coercing the payment of debts which was contemplated by any party to the contract when entered into.

The United States, therefore, violated no principle of law, or equity, or moral obligation, in admitting Florida into the Union, and is guilty of no *laches* for which she should be holden responsible in not disapproving the acts passed by her as a territory.

The several States and territories are independent sovereignties for the ordinary purposes of local government. They have the power over the liberty and lives of their citizens, and the formation of their own civil and social relations within their precinct.

They can incur obligations for all expenditures coming within their appropriate sphere as fully as the general Government. Their delinquencies in any matter, coming within the range of their powers are their own, and, however grievous a wrong they may inflict by such delinquencies on their creditors, the precedent of holding the general Government

responsible for such wrong, would be still more disastrous. It would impose burdens on individuals having no immediate share or interest in the benefit received; would constitute taxation without representation, and would confound the necessary and rightful distinctions in the partition of responsibility and accountability essential for the maintenance of Government.

The wrong complained of is not one which can be charged against The United States; she is not amenable for it, and a proper appreciation of the distinct agencies of different organizations in Government will fully exonerate The United States from the claim set up in this case. In my view, therefore, the claimants have shown no ground entitling them to recovery against the general Government.

"Florida Bonds."

London, 14th December, 1854.

The umpire reports, that this claim has been brought before the Commissioners by the holders of Bonds, issued by the "Territory of Florida," while it was under a Territorial Government, and before Florida was admitted into the Union, as one of the States of The United States. At the time of the issue of the Bonds in question the Territory was governed by a Legislative Council chosen by the people, the Governor being appointed by the President of The United States. All the Acts or Laws of the Legislative Council were required by the law of The United States, to be laid before Congress, and if not disapproved of, they became law in Florida.

For one portion of these Bonds, the claimants, contended, that by the right which Congress claimed to reject or veto any law passed by the Legislative Council of Florida, The United States Government rendered itself liable to pay the interest and principal of these Bonds, should Florida fail to do so.

For another portion of the Bonds, the claim on this ground was abandoned, and their claim was based on the fact, that The United States had in the Session of Congress of 1843-4 admitted Florida into the Union, with a Constitution, having the following clause in it.

Article 8. "No greater amount of Tax or Revenue shall at any time be levied, than may be required for the necessary expenses of Government."

The first ground of claim need hardly be treated seriously, it might as well be contended, that the British Government is responsible for all the Canada Debentures, because all the acts passed by the Canadian Parliament, require the sanction of the Home Government before they became Laws; it will be seen, however, that at the time these Bonds were bought,

it was never imagined by the buyers that the United States were in any way liable.

With regard to the second ground of claim, that The United States, by having admitted Florida into the Union as a State with the Article in her Constitution above referred to, were rendered liable to pay the debts of Florida, it may be remarked that Congress could not justly refuse to admit Florida into the Union with such a Constitution, there was nothing in it contrary or in violation of the Constitution of The United States; Congress had only the power to fix the time of admission, and reject any Constitution that was contrary to the Constitution of The United States, nor does it appear that the bondholders are in any way damaged by this Article in the Constitution of Florida; if the people of Florida refused to pay, or neglected to pay as a Territory, would they be more likely to pay as a State? There would be the same people to deal with, the Members of the Convention that formed the Constitution were chosen by the people, and the Legislature chosen by the people, would not be likely to be very different from the Convention. It is by no means clear that the 8th Article of the Constitution forbids any taxes for liquidating the liabilities of the State; if that be so, there is no difficulty in amending the Constitution, most of the States have amended their Constitutions from time to time. The bondholders have the same remedy against the State, as they had against the Territory, they have a just claim, but they are under the well-known disadvantage in both cases, they could not sue the Territory, they cannot sue the State.

It has been urged that there is no way of getting at a State Government, except through the Government of the United States. This is a mistake: there is no difficulty in the way of individuals dealing with the separate Sattes in any matters that concern the State alone, nearly all the States have public works and contract loans with individuals, American and foreign, and any person aggrieved may petition the Governor or Legislature for relief. A State cannot

deal with a foreign Government: the intercourse with foreign nations belongs to the general Government.

To show that the Florida bondholders never supposed The United States in any way responsible, attention is called to the Prospectus issued by the Agents for the sale of the bonds created for the "Union Bank; it is as follows:

"*Florida six per cent sterling bonds—Interest and principal payable at the house of Messrs. Palmers, Machillop, Dent, and Co.*

"These are the bonds of the Territory of Florida, payable to the order of the Union Bank of Florida, and endorsed by the bank. They are in sums of one thousand dollars each, bearing interest at the rate of six per cent per annum, payable half yearly: the interest and principal payable in London at the rate of 4*s.* 6*d.* sterling per dollar. The bonds are payable on the 1st of January, 1862, 1864, 1866, and 1868. The proceeds of the sale of the bonds form an addition to the active capital of the Union Bank. The bank commenced business on the 16th of January, 1835, with a capital of one million dollars, with a privilege of increasing it to three millions, and it is to complete that increase of capital that these bonds are to be sold. The profits of the bank, after paying interest of bonds and expenses of management, are retained to accumulate as a sinking fund, until that fund shall be equal in amount to the bonds issued.

"On the 1st of January, 1839, upon a bank capital of one million of dollars, the amount of the sinking fund exceeded three hundred thousand dollars. Owing to peculiar circumstances, the profits of the past year have been very large; but previous experience has proved, that in ordinary years (after paying the interest of its capital and the expense of management) the annual surplus profits of the bank (which will be added to the sinking fund) will exceed four per cent; which annuity, compounded at the bank interest at $8\frac{3}{5}$ per cent, will cause the sinking fund to effect its object in fourteen years. Indeed, the present amount of that fund, compounded at the bank interest, would pay off the whole

3,000,000 dollars of bonds in twenty-eight years, without any aid from the future annual profits of the bank, the average maturity of the bonds being twenty-six years.

"The capital of the bank, equal in amount to the bonds and the sinking fund, are to be retained and held as security for the re-payment of the bonds. Another ample security for their payment is provided by a mortgage of the property of the stockholders of the bank to the extent of three millions of dollars. The value of the property mortgaged for that object was first ascertained by the appraisement, upon oath, of five Commissioners in each county, appointed for that purpose by the Governor and Legislature of the Territory. And these appraisements were again subjected to the revision of a board of twelve Directors, of whom five are appointed by the Governor and Legislature. So great has been the rise in value of every kind of property in Florida, that the property mortgaged to the Bank would even now sell for thrice the amount of the bonds, and each succeeding year necessarily enhances its value; the holders of the bonds have, therefore, a fourfold security for their payment, viz.:

"1. The capital of the Bank equal in amount to the bonds.

"2. The sinking fund, which will effect its object in fourteen years.

"3. The property of the stockholders, originally appraised at three millions, with its increased value.

"4. The faith and credit of the Territory and State of Florida.

"By the direction of an Act of Congress, a Convention is now in session for the purpose of framing a Constitution for Florida, and she will probably become a State this year. In extent of territory she will be the sixth State in the Union. Her soil and climate are adapted to the profitable productions of Sea Island, and short staple cottons, sugar, rice, Cuba tobacco, indigo, cochineal, corn, and all the other agricultural staples of the Southern States, as well as many of the productions of the West Indies. She is rapidly increasing in number and wealth.

"Her export of cotton in the past year has exceeded 110,000 bags, and with growth is greatly extending. She possesses the only good harbours on a coast of near 2000 miles in the Gulf of Florida; which, with the contiguity of the West Indies, gives her great commercial advantages, and will ensure her becoming a great commercial State."

The securities enumerated in this document are four, and they were ample, if honestly administered; but not the slightest allusion is made to any liability of The United States, nor is there discoverable the smallest claim of the bondholders before this Commission, which is constituted for the purpose of settling the claims of British subjects against the Government of The United States, or of the citizens of The United States against the British Government. The bondholders have a just claim on the State of Florida, they have lent their money at a fair rate of interest, and the State is bound by every principle of honour to pay interest and principal, and it is to be hoped that, sooner or later, the people of Florida will discover that honesty is the best policy, and that no State can be called respectable that does not honourably fulfil its engagements.

JOSHUA BATES, *Umpire.*

Extracts from Constitution of Florida.

Preamble.

We, the people of the Territory of Florida, by our delegates in Convention assembled at the City of St. Joseph, on Monday, the third day of December, A.D. 1838, and of the independence of The United States the sixty-third year, having and claiming the right of admission into the Union, as one of the United States of America, consistent with the

principles of the Federal Constitution, and by virtue of the Treaty of amity, settlement, and limits, between The United States of America and the King of Spain, ceding the Provinces of East and West Florida to The United States, in order to secure to ourselves and our posterity the enjoyment of all the rights of life, liberty, and property, and the pursuit of happiness, do mutually agree, each with the other, to form ourselves into a free and independent State, by the name of The State of Florida.

Article I.

Declaration of Rights.

Clause 19. That no law impairing the obligation of contracts shall ever be passed.

Article VIII.

Taxation and Revenue.

Clause 2. No other or greater amount of tax or revenue shall, at any time be levied, than may be required for the necessary expenses of Government.

Article XI.

Public Domain and Internal Improvements.

Clause 2. A liberal system of internal improvements, being essential to the development of the resources of the country, shall be encouraged by the Government of this State, and it shall be the duty of the General Assembly, as soon as practicable, to ascertain by law, proper objects of improvement in relation to roads, canals, and navigable streams, and to provide for a suitable application such funds as may be appropriated for such improvements.

Article XVII.

Schedule and Ordinance.

Section 1. That all laws or parts of laws now in force, or which may be hereafter passed by the Governor and Legislative Council of the Territory of Florida, not repugnant to

the provisions of this Constitution, shall continue in force until, by operation of their provisions or limitations, the same shall cease to be in force, or until the General Assembly of this State shall alter or repeal the same; and all writs, actions, prosecutions, judgments, and contracts shall be and continue unimpaired; and all process which has heretofore issued, or which may be issued prior to the last day of the first Session of the General Assembly of this State shall be as valid as if issued in the name of the State, and nothing in this Constitution shall impair the obligation of contracts or violate vested rights, either of individuals or of associations claiming to exercise corporate privileges in this State.

JOSHUA BATES, *Umpire.*

Messrs. Laurent.

Case.

In this case the Messrs. Laurent, British subjects, carrying on business in Mexico, seek compensation from The United States' Government for the seizure and confiscation of 26,000 dollars, the property of the claimants, by General Scott, during the occupation of Mexico by The United States forces.

The learned Agent of The United States' Government having taken a preliminary objection to this claim being adjudicated upon by the Commissioners under the Convention of 1853, upon the ground of its not being within their jurisdiction, a detailed statement of the facts becomes unnecessary, as the merits are not before the Commissioners. It will be sufficient, therefore, to say that after General Scott had taken possession of Mexico, and had assumed the Government there, having first issued a proclamation, in which, in consideration of a contribution of 150,000 dollars to be paid by the City of Mexico, he promised protection and security to the inhabitants and their property, which were declared to be "under the special safeguard and honour of The United States," he seized the sum of 26,000 dollars belonging to the claimants, under the mistaken belief that they were indebted in that amount to the Mexican Government.

MR. HORNBY, British Commissioner:

I AM of opinion that the Messrs. Laurent are entitled, as British subjects, within the meaning of the Convention of 1853, to be heard before the Commissioners in support of their claim to compensation from the Government of The United States.

The first Article of the Convention provides that "all claims on the part of corporations, companies, or private individuals, *subjects* of Her Britannic Majesty, upon the Government of The United States, and all claims on the part of corporations, companies, or private individuals, *citizens of The United States*, upon the Government of Her Britannic Majesty, which may have been presented to either Government for its interposition with the other since the signature of the Treaty of Peace and Friendship concluded between Great Britain and the United States of America at Ghent, on the 24th of December, 1814, and which yet remain unsettled, as well as any other such claims which may be presented within the time specified in Article III, hereinafter mentioned, shall be referred to two Commissioners, to be appointed in the following manner."

It is not disputed that the Messrs. Laurent are British-born subjects, nor pretended that, except in so far as their character of British subjects may be affected by *mere* residence abroad, they have done anything to divest themselves of this character. They have not been naturalized in Mexico; on the contrary, they have annually taken out a permission to reside in Mexico, in which permission they have been uniformly designated as British subjects, and generally they have, so far as lay in their power, preserved their English character. This being so, and having, as they conceive, some ground of complaint against The United States' Government, they have appealed to the English Government for its interposition on their behalf with that of The United States. It

appears therefore to me, that this case comes within the LETTER of the Convention, and is *primâ facie* within our jurisdiction.

But it is contended, by the learned Agent of The United States, that though within the *letter*, the case is not within the *spirit* of the Convention; submitting that the term "British subjects," used in the Treaty, is not to be interpreted according to English law, but according to international law, and that by the latter a person *can only* be regarded as a citizen or a subject of the country in which he is for the time being domiciled. I do not, however, understand it to have been assumed by the Agent of Her Majesty's Government that the claimants, being "British subjects" within the terms of a British statute, are, therefore, *necessarily* "British subjects" within the meaning of the Convention. It is clearly not the Statute Law of England which is to give the Rule of Interpretation, but the obvious intention of the parties to the Treaty.

Now, it is undoubtedly true that treaties are to be interpreted according to international law; but international law does not affix an unvarying meaning to particular words, or prescribe any rule for the construction of Treaties, other than that applicable to the interpretation of all written documents—namely, to discover and give effect to the intention of the contracting parties, which intention is to be collected from the language of the instrument of agreement, taken in connection with surrounding circumstances to which it has reference.

The cases which have been cited by the American Agent are authorities for the well-known principle of international law, that foreigners, domiciled in an enemy's country, cannot set up a *neutral* character as against an invading force on account of their *foreign* origin, so as to entitle them to immunity from the ordinary consequences of war; and with this undoubted principle, the declarations of the English Ministers in reference to the present war with Russia, as well as the recent decision of the Admiralty Court in the case of "The Abo," cited by the learned Agent of The United States, are

in strict conformity. It may be also, when we come to consider the *merits* of Messrs. Laurent's claim, that this principle will be found to govern the decision which we shall have to give for or against the claimants; but upon examination of the cases cited, it is clear they do *not* establish the principle which they have been supposed to prove, viz., that the term "British subjects," as used in this Treaty, cannot, under *any circumstances whatever*, be intended to apply to British subjects domiciled out of Her Majesty's dominions.

Several cases which were decided under the Treaty of 1814, between France and England, have been referred to.

The object of that Treaty was to provide compensation for all "British subjects" whose property had been confiscated by the Revolutionary Government of France. If the construction which is *now* contended for by the American Agent had been put upon the language of that Treaty, it would have followed that no persons domiciled in France could have been admitted to claim compensation under the title of "British subjects;" and such a construction would have gone far to defeat the very object for which the Treaty was entered into, as it is a matter of history that the property of many persons, established as merchants, or otherwise, in France, at the time of the Revolution, was seized upon the very ground that the owners were British subjects, which shows that mere domicile does not settle the question; and, moreover, on reference to the cases, I cannot discover that the construction contended for by the learned Agent was put upon the French and English Treaty.

Genessee's case reported in the 2nd volume of Knapp's Reports, p. 345, is one in which it distinctly appears that Messrs. Boyd and Kerr, the claimants, were established as bankers at Paris. Now, if the present objection were valid, it would have been a sufficient answer to that claim to have said, Messrs. Boyd and Kerr had established themselves for commercial purposes and were domiciled in France; that they had voluntarily divested themselves of the character of British, and had assumed that of French subjects; and can-

not, therefore, claim the benefit of a Treaty, which was intended for the protection of those British subjects only who had not quitted their own country. Messrs. Boyd and Kerr, however, were held to be clearly entitled to compensation as British subjects; and by the decision of the same eminent judge, Sir William Scott, whose judgments in other cases have been quoted in opposition to the admissibility of the claim of Messrs. Laurent in the present case. Drummond's case, decided under the same Convention, has been especially relied on. The reasons, however, which are expressly given for the decision in that case, show, it was *not* determined on the mere fact of the claimant being domiciled in France, *but that*, from special circumstances,—such as accepting military employment under the French Crown,—he had voluntarily taken upon himself the character of a French subject, and, having done so, the new French Government had a right to treat him as such, and, consequently, that he was not entitled to indemnity.

If there had been analogous circumstances in the present case, I might have felt bound to hold that the Messrs. Laurent were not entitled to resume at pleasure, for their advantage, the character of British subjects, which, for their advantage, they had voluntarily renounced; but in the entire absence of such circumstances, I am of opinion, that mere residence abroad does not deprive them of all title to the protection of the British Government, or can preclude that Government from taking steps to procure for them redress if they have suffered an injury in violation of the law of nations, or absolve the American Government from the liability to redress such an injury.

In the case of the "Ann," a British subject who had been domiciled in The United States during the war between that country and Great Britain, sought to be admitted to the benefit of the Orders in Council which were intended to provide compensation for those British subjects who had been inadvertently injured in the course of the war by the English cruisers, the claimant, having adhered to the enemy, was plainly not one of the class of persons for whose relief

the Orders in Council were issued. The injury he sustained was, under these circumstances, in no way wrongful. The decision therefore was not, as we are now asked to decide, that the claimant being domiciled abroad, could not, under any circumstances, be entitled to the character of British subject; but that he was not a British subject, within the meaning of the instrument then under consideration, entitled to redress. The "Indian Chief," reported in 3 Rob. Rep. 12, as well as the "President," in 5 Rob. Rep. 107, are both cases in which the claimants had acquired a hostile character against their own country, and, as enemies, had sustained losses which were rightfully inflicted on enemies. It was impossible, therefore, for them to establish a claim *against this country* upon the ground that they were British subjects, in the face of the fact of their having been in a position of hostility to Great Britain. In these cases, however, the *merits* and justice of the claim were in question, and they did not depend, nor were they decided, upon a mere question of domicile. It does not appear to me necessary to examine the other cases in detail, inasmuch as *none of them* in my judgment show that the term "British subject" necessarily excludes every person domiciled out of the British dominions. And it becomes our duty to ascertain, from the object and language of the present Convention, the sense in which the words in question were employed by the Contracting Parties.

The object of the Convention is stated to effect "a speedy and equitable settlement" of certain claims pending, and which had become the subject of discussion between the two Governments; and it is not merely for the settlement of the claims themselves, but, rather, to remove them from the arena of discussion between the two Governments, that the present tribunal has been erected; and it is, therefore, provided that all claims, &c., which may have been, or might be, presented to either Government for its interposition with the other, should be referred to this Commission.

It is a *fact* that the applications to the English and American Governments for their interposition one with the other *have not* been confined to citizens or subjects domi-

ciled in their own country, but the claims of persons domiciled abroad have, in several instances, become the subject of correspondence between the two Governments;—it appears to me, therefore, that if the sense in which the term "British subject" or "American citizen" are to be construed be sought in the context of the Convention, it will be found that the Contracting Parties contemplated American citizens or British subjects, wherever resident, whose claims had actually been, or might properly become, the subject of the interposition of the one Government with the other.

If, then, this be a correct mode of stating the question which we have to determine, it cannot be denied that the *practice* of Governments has been to extend their protection to such of their citizens as may be domiciled abroad, and to insist upon, and with success, redress for injuries. Instances in which the American Government has so extended its protection and demanded compensation have been mentioned; and the case of Don Pacifico shows that the English Government has considered itself entitled to interfere on behalf of an Englishman, though domiciled abroad. And many other instances might be collected from the history of recent times.

Having regard, therefore, to the fact that both the English and American Governments have, from time to time, interposed in respect of their subjects or citizens domiciled out of their respective countries, and that such interposition has in some instances led to the preferment of claims by the one Government on the other which were pending at the time that the present Convention was entered into, it is clear to me that the High Contracting Parties in entering into the present Treaty intended to provide a tribunal for the settlement of all claims, whether preferred on behalf of subjects domiciled in the British dominions or elsewhere, and consequently that the claim of the Messrs. Laurent is admissible before us.

I cannot find any force in the argument, that if the Messrs. Laurent are admitted under this Convention as British subjects, thousands of American citizens by birth

having claims against the American Government, might also have presented them before the Commissioners as British subjects by descent. If I am right in the rule of interpretation which I have adopted, it is clear that they could not; for it would be ridiculous to suppose that either of the Contracting Parties intended this international tribunal to adjudicate upon the claims of acknowledged citizens or subjects upon their own Governments. The effect also of acquiescence in the interpretation to be given to the words "British subjects" in the Treaty contended for by the learned Agent of The United States, would be that henceforth no merchant residing in a foreign country could ever claim the assistance and protection of the Governmet of the country of which he was a native, and to which country he owes allegiance. Thus an English merchant residing in France, or an American merchant residing in England, is to be considered as barred from appealing to England or America for protection and assistance.

Mr. Everett, in his correspondence with Lord Aberdeen on the Rough Rice question, incidentally maintains the same view of the law and practice of nations which I have already expressed, although he carries it somewhat further than is necessary for the purposes of the argument in the present case. The American Minister there insisted on his right to interfere, under the Treaty of Commerce between Great Britain and The United States, on behalf of an English firm, claiming compensation for pecuniary damage done in consequence of a non-observance of the Treaty, because *one* of the members of that firm was an American citizen, *domiciled* in England. If in that case *domicile* in England had ousted the American partner of his right to appeal to The United States Government for protection, or for its interference in obtaining for him the compensation due for an injury thus done to him, Mr. Everett was wrong in claiming the right to interfere, and Lord Aberdeen was wrong in admitting it.

My judgment is founded on the following conclusions, at which, after a careful consideration of the arguments that

have been advanced on either side, I have arrived. To recapitulate them, they are shortly as follows:

That the Messrs. Laurent are admitted to be—whatever else they may also be—British subjects.

That mere residence in a foreign country in time of peace or war, does not deprive a merchant of his original citizenship, or of the right to call for the protection of the Government of his native country; although his continued residence in the country in time of war, gives the right to the enemies of that country to consider and treat him as an enemy.

That although such residence may clothe him with certain rights of citizenship and involve certain liabilities, it does not divest his original national character.

That the practice and usage of nations sanction the interference of a Government on behalf of its subjects or citizens resident abroad, as well as at home.

That Consuls and Diplomatic Agents are specially instructed to watch over and protect the subjects of the countries of their respective Governments, resident in the countries to which they may be accredited.

That such being the usage and practice of nations, the words used in this Treaty are to be interpreted in connection with, and by the aid of, such usage and practice.

That, consequently, it was the intention of the Contracting Parties to the Convention of 1853, that the Commissioners appointed under it should decide, according to justice and equity, upon the claims of individuals in the position of the Messrs. Laurent.

Mr. UPHAM, American Commissioner:

IT appears from the memorial of the claimants, filed in this case, that they have been resident merchants, engaged in business in Mexico, from 1829 to the present time, a period of twenty-five years; that, in 1847, a law was passed by the Mexican Congress, authorizing a sale of certain Church property, for the purpose of raising the sum of 15,000,000 dollars for the necessities of the Government.

The claimants occupied a house belonging to the Church, and made proposals to the Government to purchase it. These proposals were accepted, and the Government ordered the contract to be duly drawn up, and executed by the authorized officer, appointed for this purpose. The contract was signed by the Messrs. Laurent, and the purchase-money was deposited in the hands of a banker, to await the execution of the instrument by the Government officer; but owing to some neglect it was not signed by him, and in the meantime a Revolution occurred, and the new President was authorized to annul the law for the sale of the Church property, which he did. The claimants remonstrated against the proceeding, and claimed the property under their contract with the Government.

While such was the existing state of things in reference to this property, war occurred between The United States and Mexico. The city of Mexico was taken, and the money of the Messrs. Laurent thus deposited, was confiscated by the commander of the American army as the property of the Mexican Government.

After peace was made between the two countries, the Church claimed the house as their property, and instituted suit to obtain possession of it. The Mexican courts sustained the claim of the Church, and dispossessed the Messrs. Laurent of the house; and they now seek remuneration against The United States, for the money confiscated, as *British sub-*

jects, entitled to prosecute their claim under the provisions of this Convention.

The first Article in the Convention provides "that all claims of corporations, companies, or private individuals, *subjects* of Her Britannic Majesty upon the Government of The United States, and all claims of *citizens* of The United States against the British Government" from the year 1814 to the present time shall be submitted to the decision of this Commission.

It has been objected, on the part of The United States, that the claimants in this case are not *British subjects*, within the meaning of the terms of this Convention, but were domiciled merchants in Mexico, engaged in trade there during war between that country and The United States, and are, therefore to be regarded as Mexican citizens and alien enemies; and that all acts of hostility between the two countries were settled and adjusted by the Treaty of Peace, or, if unsettled, can only be adjusted by The United States and Mexico.

On the other hand, it is contended that the claimants are subjects within the terms of the British statute, and are to be held as such, so far as regards their *remedy* under this Convention, though in adjudicating upon their claim they may be entitled to no greater rights than a Mexican citizen.

It is quite clear to me that the correlative terms "*citizens*" and "*subjects*" were used by the Contracting Parties in the Convention in contrast with and exclusive of each other; and that it was not contemplated by them that subjects of Great Britain could be regarded, at the same period of time, as *citizens* of The United States, or that citizens of The United States might in the same manner have the additional character of *subjects* of Great Britain.

If however we affix to the term British subjects the meaning established by the municipal laws of England in their statutes, it will include vast numbers of American citizens, embracing not only all the emigrants from Great Britain who have become settled and naturalized citizens of The United States since the Revolution, but their children

and grandchildren who may have been born there. (*See* 7 *Anne, ch.* 5; 4 *Geo. II., ch.* 21; *and* 13 *Geo. III., ch.* 21.)

Thus, under this construction, every officer in the American Government might be entitled to enforce before this Commission claims, as British subjects, against their own Government, as their grandfathers may have been subjects of Great Britain.

This constructive doctrine as to British subjects, though it still remains upon the British statute-book, has long been wholly obsolete as to all international action between Great Britain and other states. Many years since the claim was put forth by a British commander, that naturalized citizens of America engaged in war against their native country would be summarily proceeded against as British subjects. But the claim was at once met by the declaration that for every American citizen thus proceeded against, a similar example would be made of British prisoners, and it was abandoned.

It is possible that Great Britain may keep this provision upon her statute-book, in order that the children and grandchildren of emigrants from that country who may choose to return again to her jurisdiction shall be received, at once, into full fellowship as subjects; but in the decisions of her courts, in her international contracts, in her construction of the rights of actual subjects, and the disabilities of aliens, she holds, without exception, that a person going to a foreign country, and becoming domiciled there, in the legal sense of that term, is to be regarded, for all civil purposes, as a subject and citizen of such country, entitled to the rights and subject to the disabilities arising from his domicile.

There never has been any international difference of opinion between the two Governments as to who are actual citizens and subjects of either power in their dealings and relations with each other, and there can be no doubt that this well-understood international meaning was adopted and used in this Convention in reference to the terms citizens and subjects of either country.

I contend, then, that we are not to look to the *Statutes* of

England for the definition of the term *subject*, but to the settled practice and usages of nations. The same rule of interpretation applies to the term *citizens*. The only difference in the two cases is, that The United States have established conditions of citizenship in harmony with the present views and usages of nations, while such is not the case with the term *subject* as established by the municipal law of England.

It seems to me hardly necessary to sustain, by authorities, the position taken as to the proper construction of the terms under consideration.

The decisions of England and The United States, as well as those of every other nation, are uniform to the point, that an indivual going to another country, and becoming domiciled there for purposes of trade, is, by the law of nations, to be considered a subject of such country for all civil purposes, whether such Government be hostile or neutral power.

Authorities to this effect will be found in *Wilson* v. *Marryat*, 8 *Term Rep.* 31; *M'Connel* v. *Hector*, 3 *Bos. & Pull.* 113; *The Indian Chief*, 3 *Rob. Rep.* 12; *The Anna Catherina*, 4 *Rob. Rep.* 107; *Do. Danous, note*, 255; *The President*, 5 *Rob. Rep.* 277; *The Matchless*, 1 *Hagg. Ad. Rep.* 103; *The Odin, Hall, master*, 1 *Rob. Rep.* 296; *Bell* v. *Reid*, 1 *Maule & Selw.* 726.

American authorities to the same point will be found in the case of *The Sloop Chester*, 2 *Dallas* 41; *Murray* v. *Schooner Betsey*, 2 *Cranch*, 64; *Maley* v. *Shattuck*, 3 *Cranch*, 488; *Livingston* v. *Maryland Insurance Company*, 7 *Cranch*, 506; *The Venus*, 8 *Cranch*, 253; *The Frances*, 8 *Cranch*, 363; *The Dos Hernanos*, 2 *Wheat*, 76. These authorities, with various others, are cited and approved by Chancellor Kent in 1 *Kent's Commentaries*, 75; and he alleges that the doctrine sustained by them "is founded on the principles of international law, and accords with the reason and practice of all civilized nations."

All writers on international law concur in these views, and adopt the maxim, "*Migrans jura amittat ac privilegia et*

immunitates domicilii prioris." *Voet, tome,* 1, 347; *Grotius, Book* 3. *p.* 56, *ch.* 2, *sec.* 2; *Book* 3, *ch.* 4, *sec.* 6; *Vattel, Book* 1, *ch.* 19, *sec.* 212; *Wheaton's International Law, Part* 4, *ch.* 1, *secs.* 17 & 19.

The same principles are declared by public announcement of the present English Ministry in reference to the existing war with Russia, "as the settled law and practice of nations," and that, "by such law and practice, a belligerent has a right to consider as *enemies* all persons who reside in a hostile country, or maintain commercial establishments therein, whether such persons are by birth neutrals, allies, enemies, or fellow-subjects."

And in conformity with this declaration, and the previous decisions on this subject, it was adjudged by the Admiralty Court, a short time since, in the case of *The Abo*, that "in time of war a person must be considered as belonging to the nation where he resides and carries on his trade so far as the principles and rules of law are concerned, whether he reside in the enemy's or a neutral country."—*The Times*, July 22, 1854.

The English authorities which have been cited expressly declare, that a person domiciled in another country, "is to be taken as a subject of such country." These are the words of Lord Stowell, in the case of "The President" above cited. And in making such decision, he does not mean to be understood that such a person may be a citizen of another country, and at the same time a British subject, as is contended before us; but he expressly declares, in *The Ann*, 1 *Dod. Ad. Rep.* 224, that this cannot be, because, he says, "he cannot take advantage of *both characters at the same time.*"

The owner of "The Ann" was a British-born subject, and his wife and child resided in Scotland, but he himself personally was domiciled in The United States. He was therefore clearly a British subject by *the municipal laws* of England, but Sir William Scott (Lord Stowell) held that, as regarded his *international intercourse and character*, he was not a British subject, or entitled to redress as such, and his property was condemned accordingly, notwithstanding

the decree in council declared "that all property of British subjects," seized under like circumstances, "should be restored."

The international definition of subject is also recognized and adjudged in *Drummond's case*, 2 *Knapp's Privy Council Reports*, 295, where it was holden that, though an individual might be, formally and literally, by the law of Great Britain, a British subject, still there was a question beyond that, and that was, whether he was a British subject within the meaning of the Treaty then under consideration; and it was there contended that all Treaties must be interpreted according to the law of nations, and that where a Treaty speaks of the subjects of any nation, it means those who are actually and effectually under its rule and government, and not those who, for certain purposes, under the mere municipal obligations of a country, may be held to maintain that character.

And in *Long's case*, 2 *Knapp's Privy Council Reports*, 51, it was holden that a corporation, composed of British subjects, existing in a foreign country, and under the consent of a foreign Government, must be considered as a foreign corporation, and is not therefore entitled to claim compensation for the loss of its property under a Treaty giving the right of doing so to *British subjects*.

In the same manner, and on the same principle, the converse of the proposition was holden in the *Countess of Conway's case*, 2 *Knapp's Privy Council Reports*, 364, that a French native-born subject, residing in England, had the character of a British subject, and was entitled to claim compensation as such, against *his own country*, for losses under a Treaty providing compensation to be made "to British subjects."

These cases seem to me to be sound in principle and explicit in authority; and I am surprised, after these well-established and adjudicated decisions, the doctrine is still contended for, that in the interpretation of the term *subject*, in this Convention, we are to be confined to the meaning affixed to it by the English statute.

It is desirable, before giving to it this construction, we should ascertain precisely what it means

By applying this construction to the Convention, the second article would be made to read as follows:—"That all claims against The United States, of corporations, companies, or private individuals, resident subjects of Her Britannic Majesty, and of all native-born citizens of Great Britain, who may have emigrated to The United States since the Revolution, and of their children and grandchildren who may have been born there, and all claims of citizens of The United States against the British Government, shall be submitted to the decision of the Board of Commissioners, whose decision shall be final," etc.

It seems to me that such an interpolation in the terms of this Convention, or such a construction of it, would strike no persons with more surprise than the negotiators of the Treaty.

It is said, however, in order to obviate the evident difficulty of regarding the Treaty in this light, that a person holding the statute relation of *subject* to England, may appear before this Commission, and prosecute his claim as such; but if he is domiciled in another country, his case is to be adjudged and determined by the Commission as though he were a citizen of that country.

But I regard this as an erroneous and untenable position for any court or tribunal to take.

Suppose, for instance, that an American citizen, whose grandfather was born in England, should come before this Commission, armed with the power and authority of the British Government, to enforce his claim here against his own country, will it answer for this Commission to say, that by the law of England he is a British *subject*, and as such we must *hear him*, but we will adjudge his case precisely as though he were a *a citizen of The United States?* Surely not. Like any other citizen of The United States, he must pursue his remedy before the ordinary constituted tribunals of his country, or before Congress. It would be a futile attempt in us to undertake to make any award on

the merits of his case, as it cannot be supposed that either nation would sanction such an extraordinary assumption of power.

This tribunal was not constituted to pass upon any such claim; neither was it constituted to pass upon the claim of any British-born subject who may have domiciled himself in Mexico, and who continued to reside there during a war between The United States and that country, "carrying on," in the words of the legal authorities, "trade there, paying the taxes, and employing the people of the country, and expending his industry and capital in her service."

"Such a person," says Lord Chief Justice Alvanly, "who resides in a hostile country, is a subject of such country. He is to all civil purposes as much an alien enemy as if he were born there, and to hold to a different conclusion would be to contradict all the modern authorities on the subject." —*M'Connel* v. *Hector*, 3 *Bos & Pull.* 114.

This foreign character, however assumed, is a substantial recognized civil relation, as much so as the prior subsisting relation with England. The Messrs. Laurent, in this case, are citizens of Mexico, and their claim against the United States is a Mexican claim. Such a claim can only be adjudicated between the two Governments where it originated. They alone are the national parties to it. And neither Mexico nor The United States are here with the necessary papers and evidence for its adjustment, for the reason that neither of those Governments has delegated to us any such authority, and an attempt by us to hear them in the decision of such claims would be wholly nugatory.

It is suggested in the argument in this case, "that the claim of English *subjects* cannot extend to every case in which a British subject has been a party, but would only extend to claims upon The United States' Government, preferred by persons who had not by their acts *forfeited their right* to appeal to the English Government for its interposition."

What would constitute a forfeiture of such right of a British subject is not stated; whether the act of the father would bar the son of his right as a British subject; or

whether being born in a foreign country, where his father was domiciled, would have such effect. Many such questions would arise under such a mode of determining the national character. If however the question, whether an individual is to be regarded as a subject of Great Britain, is to depend upon the fact, whether he has, *by his own acts*, forfeited the right to appeal to the English Government for protection, it seems to me this case is clearly of that character.

The injury of which the Messrs. Laurent complain, arose from their placing themselves in the position of *alien enemies* of The United States in the war with Mexico; they thereby forfeited their right to protection on the part of England, whose Government was *neutral*, and could neither aid, abet, or countenance any of its subjects in such acts of hostility. They could only, on this principle, be regarded as British subjects while holding the position of the British nation; and when they departed from such position, and became alien enemies of The United States, they *forfeited the protection of England*, and their right to appear before this Commission.

The United States has no remedy against Great Britain for the *conduct* of the Messrs. Laurent while domiciled in a foreign country, as her *subjects;* and they, as British subjects, have no claim to redress against The United States, or to appear before this tribunal in that character.

Domicile, under all circumstances, stamps upon the individual the character of *foreigners*, *neutral* or *alien* as the case may be. Chancellor Kent says it is "*the test of national character;*" and that the only limitation upon the principle of determining the character from residence laid down in any authority, is that the party, so far as regards his own country, must not take up arms against it.—1 *Kent's Com.* 76.

The municipal relation of *subject* is, for the time being, wholly subordinate to the new relation impressed upon the individual, and cannot exist as an *international relation.* His original right, as subject, may revive or revert if he

returns to his native country, but it is otherwise inoperative.

Each nation may well claim of other Governments that its own nativ born citizens, who are domiciled with them, should be equally protected by law with the native-born citizens of other countries. Invidious distinctions in this respect would manifest a spirit of hostility against the parent country that could not be overlooked. But when individuals leave their own land, and have become domiciled in another country, and enjoy there the protection and the benefit of availing themselves of its laws, courts, tribunals, and appeals to its general Government, as fully and freely as the native-born citizens of that country, for the protection of their rights and the business in which they are engaged, the original Government of such persons has no claim to interfere in their behalf. Such persons become, by the settled adjudications of all countries, and the judgment of all writers on public law, in an international point of view, citizens of such country, as to all matters arising from such business and residence; and the Treaties and Conventions between foreign States are framed on this basis.

An attempt on the part of this Commission to overrule or revise the decisions of British or American Courts as to the business matters, transactions, or liabilities of persons thus domiciled in either country, or to pass upon them while such Courts were fully open for their hearing and decision, would be an utter perversion of the powers granted by this Convention.

Persons thus domiciled have the rights and the disabilities, under this Convention, of the country under whose protection they have chosen to reside. An American native-born citizen who has taken up his residence in London, and engaged in business there, has the same rights, under this Convention, against The United States, for any claims arising from his business there, as any other citizen of London, but his claim is as a *British subject*: his domicile, by the settled construction of public law, affixes on him that character.

The same is the case with an English native-born subject resident in New York; his claims under this Convention can be those only of an American citizen, so far as regards the business of his elected domicile, or any adjudications upon it.

And where an individual is domiciled in another country different from that of either of the Contracting Parties to this Convention,—as in Mexico, for instance,—his claim arising from acts connected with and partaking of such domicile, is not included in a Convention for the adjustment of the claims of British subjects and American citizens.

Such a claim must be prosecuted through Conventions made between the country of his adoption, under whose protection his business was carried on and his claim arose, and The United States. As regards any powers confided to us, he is to be holden as a Mexican citizen. Such a decision in no manner conflicts with or infringes on any international right of England as regards her subjects.

For these reasons, I am of opinion that the exception taken to our jurisdiction over the claim of the Messrs. Laurent, as presented to us is sustained, and that no authority has been delegated to this Commission to adjudicate upon it.

Messrs. Laurent.

London, 20th December, 1854.

The umpire reports, that this claim by Messrs. Laurent is for damages which they allege they received in the year 1847 from the conduct of The United States' General Scott, who captured the city of Mexico in that year. The Treaty of Peace between The United States and Mexico settled all claims of Mexican citizens against The United States. Messrs. Laurent claim as British subjects; it is quite settled that none but British subjects, or citizens of The United States, can have any *locus standi* before this Commission. It is denied, on behalf of The United States, that Messrs. Laurent can claim to be British subjects within the meaning of the words "British subjects," as used in the Convention, by virtue of which this Commission was appointed; and this seems to be the correct view of the case, both on principle and with reference to the reported authorities on the subject. According to the municipal law of England, Messrs. Laurent may be, for some purposes, still British subjects; but the language of the Convention must be construed in accordance with the law of nations, and not according to the laws of any one nation in particular; and it is sufficiently clear that, by the rules of international law, and for the purposes of this Commission, Messrs. Laurent were, for the time being at least, Mexican citizens, and not British subjects.

There are many authorities which bear on this question. Lord Stowell, in giving judgment in the case of the "Matchless" (1 Haggard, page 97), said "upon such a question it has certainly been laid down by accredited writers on general law, and upon grounds apparently not unreasonable, *that if a merchant expatriates himself as a merchant, to carry on the trade of another country, exporting its produce, paying its taxes, employing its people, and expending his*

spirit, his industry, and his capital in its service, he is to be deemed a merchant of that country, notwithstanding he may, in some respects, be less favoured in that country than one of its native subjects. Our own country, which is charged with holding the doctrine of unextinguishable allegiance more tenaciously than others, is no stranger to this rule. Its highest tribunals, which adjudicate the national character of property taken in war, apply it universally. They privilege persons residing in a neutral country to trade as freely with the enemies of Great Britain in war as the native subject of that neutral country, although our own resident merchants cannot without special permission of the Crown."

The words of Lord Stowell apply exactly to the case of Messrs. Laurent. They, as far as in them lay, had expatriated themselves: they had resided twenty years in Mexico, carrying on their business, and with every intention of remaining there, as is sufficiently evidenced by their wishing to buy the freehold of the house in which they were living, and, according to Lord Stowell's judgment, ought to be considered Mexican citizens.

In the case of the "President" (5 Robinson, 277), which vessel was captured on a voyage from the Cape of Good Hope to Europe, and claimed for Mr. J. Elmslee as a citizen of The United States, it appeared that he had been a British-born subject, who had gone to the Cape during the last war, and had been employed as American Consul at that place. In giving judgment, Sir William Scott said, "This Court must, I think, surrender every principle on which it has acted in considering the question of national character, if it was to restore this vessel. The claimant is described to have been for many years setted at the Cape, with an established house of trade, and as a merchant of that place, and must be taken as a subject of the enemy's country" (the Dutch being then at war with England).

In a recent case, "The Aina," decided in the Admiralty Court in June last. The claimant was a native of the Free Hans Town of Lubec, and Consul of His Majesty the King of the Netherlands, at Helsingfors in Finland. He had lent

money, before the war with Russia, on bottomry on the ship, which ship was captured by the British fleet in the Baltic. Dr. Lushington, in giving judgment, is reported to have said, "Two questions have arisen with respect to the present claim; first, as to the national character of the claimant, whether he is to be considered an enemy or a neutral with reference to this question. It is stated that he is a citizen of the Free Hans Town of Lubec, and Consul of His Majesty the King of the Netherlands, at Helsingfors, in Finland. Upon this I can put but one construction—that he is a resident in Finland, and carrying on business there. I take it to be a point beyond controversy, that where a neutral, after the commencement of the war, continues to reside in the enemy's country for the purposes of trade, he is considered as adhering to the enemy, and is disqualified from claiming as a neutral altogether."

I am unable to see why the principle laid down so fully in these cases (and many more might be cited), should not be applied to that of Messrs. Laurent. They had, as before observed, long been residents in Mexico, they had a fixed home there, with apparently every intention of continuing to reside there, insomuch that they endeavoured to buy a portion of the soil of Mexico.

I think, therefore, that for the purposes of this Commission, they were Mexican citizens, and not British subjects, and that the Commissioners do not form a tribunal competent to entertain their claims.

JOSHUA BATES, *Umpire.*

Bay of Fundy. (Fishery Cases.)

Mr. Hornby, British Commissioner:

The American fishing schooner, "Washington," of Newbury, in the State of Massachusetts, was seized, by order of the Customs authorities of Nova Scotia, on the 10th of May, in the year 1843, for fishing with in the Bay of Fundy, contrary to the stipulations of the Treaty of the 20th of October, 1818, and the "Argus," off the coast of Cape Breton, by H. M. Cutter, "Sylph," sometime in the following year, on a charge of being within three miles of a line drawn from two headlands inclosing a bay called "Cow Bay," on the north-east coast of Nova Scotia.

In the case of the "Director," another American schooner, also seized for fishing within the prescribed limits, the papers and evidence do not disclose sufficient facts to enable me to form any judgment on the merits. For this reason I am obliged to reject it. I shall, therefore, in the present opinion, confine my observations to the two cases of the "Washington" and "Argus."

In these cases, then, we have to consider whether or not the fishing within the waters alluded to was a violation of the provisions of the Treaty of 1818. To determine this, reference must be had to the language of the Treaty itself, inasmuch as it placed the rights and privileges of the two countries upon a new basis—repealed all former Treaties relating to the subject—and declared what should and should not be the respective fishing-grounds of the two nations. It is obvious, therefore, that we ought to confine our attention to the meaning of the Contracting Parties to the Treaty of 1818, as expressed in the language there made use of.

The Article having particular reference to the right to enter and fish within Bays, etc., is the first, and is as follows :—

"Whereas differences have arisen respecting the liberty claimed by The United States to take, dry, and cure fish on certain coasts, bays, harbours, and creeks of His Britannic Majesty's dominions in America, it is agreed between the High Contracting Parties that the inhabitants of The United States shall have for ever, in common with the subjects of His Britannic Majesty, the liberty to take fish of every kind on that part of the southern coast of Newfoundland which extends from Cape Ray to the Quirpon Islands, on the shores of the Magdalen Islands; and also on the coasts, bays, harbours, and creeks from Mount Joly, on the southern coast of Labrador, to and through the Straits of Belle Isle, and thence northwardly indefinitely along the coast, without prejudice however to any of the exclusive rights of the Hudson's Bay Company; and that the American fishermen shall have liberty to dry and cure fish in any of the southern parts of the coast of Newfoundland here above described, and of the coast of the unsettled bays, harbours, and creeks of Labrador; but as soon as the same, or any portion thereof, shall be settled, it shall not be lawful for the said fishermen to dry or cure fish at such portion so settled without previous agreement for such purpose with the inhabitants, proprietors, or possessors of the ground. And The United States hereby renounce for ever any liberty heretofore enjoyed or claimed by the inhabitants thereof to take, dry, or cure fish *on or within three marine miles of any of the coasts, bays, creeks, or harbours of His Britannic Majesty's dominions in America, not included within the above-mentioned limits:* provided however that the American fishermen shall be admitted *to enter such bays* or harbours for the purpose of shelter, and of repairing damages therein, of purchasing wood and of obtaining water, *and for no other purpose whatever.* But they shall be under such restrictions as may be necessary to prevent their taking, drying, or curing fish therein, or in any other manner whatever abusing the privileges hereby reserved to them."

From this provision of the Treaty it will be seen that The United States "distinctly renounced for ever the liberty they had once enjoyed of *taking*, drying, or curing fish" on or within three marine miles of any of the coasts, bays, creeks, or harbours of the British provinces; leave, however, being given to American fishermen to *enter* such "bays" or harbours for purposes of shelter, repairing damages, and obtaining wood and water. It is evident, therefore, that having indisputably enjoyed the liberty of taking fish within three marine miles of any of the bays, etc. etc.—The Bay of Fundy of course included,—The United States renounced the further enjoyment of that right by the very terms of the Article to which I have alluded. What, then, is the true construction of the expression, "on or within three marine miles of any of the bays, creeks, and harbours?" It is clear that each of these terms is intended to mean something more than "coasts," or they would not have been used. The latter term has received a judicial interpretation expressly with reference to territorial jurisdiction, and it has been held to signify "the parts of the land bordering on the sea, and extending to low-water mark;" in other words, "the shores at low water,"—"shores" and "coasts," in fact, being equivalent terms. "See "The Africane," Bee's U. S. Admiralty Reports, p. 205.

Now the word "bay" has been interpreted by a high judicial authority in The United States to be "an enclosed part of the sea,"* and not, as it has been argued here before us, "an indent of the coast."

A "bay" being, therefore, "an enclosed part of the sea," and not an "indent of the coast," the next question that arises has reference to the meaning to be attached to the phrase "within three marine miles of a bay." If it was intended that these miles should be measured from the coast or shores of the bay, it was useless to have mentioned the word "bay" at all, because fishing within three marine miles from the "coasts" had already been excluded; but as it is a

* See Chief Justice Marshall's judgment in U. S. *v.* Bevan, 3 Wheaton, Rep. p. 387.

rule, that in the interpretation of statutes and treaties, effect is to be given to every word when possible,* we are bound, in construing this Treaty of 1818, to consider that the word "Bay" was intentionally inserted, and had a particular meaning attached to it. We have seen that judicial decisions of authority have attached a plain and positive meaning to it; and we know that the same interpretation has been given by all the text-writers on international law, when making use of this term. To give, then, full effect to the phrase, "within three marine miles of a bay," and to make these words operative, we must read them as if the judicial and generally received interpretation of the word "Bay" was used instead of the term itself. The sentence would then stand thus—"within three marine miles of an enclosed part of the sea;" and it would be impossible to insist that such miles were to be measured from the line of coast, because it would be absurd to contend that a line or indent of the coast is equivalent in meaning with "an enclosed part of the sea." It is then clear, that in order to measure the "three miles," we must begin from an imaginary line drawn across the outer edge or chord of the "Bay" or "enclosed part of the sea."

But what is conclusive on this part of the argument is that portion of the clause which contains a proviso that American fishermen shall be permitted to *enter* such "Bays" and harbours for certain specified purposes other than taking fish; for if the restriction alluded to in the first part of the Article, had not operated to exclude American fishermen from entering the "Bays" to fish, so long as they kept from within three miles of the coast—this proviso would have been not only without meaning, but perfectly absurd, for it cannot be contended that, by one part of the same clause, they were to be allowed to enter a "Bay" to fish; and by the other to be permitted to enter a "Bay" for certain purposes, *except that* of taking of fish. Such a construction would be to make the two provisions of the clause inconsistent and con-

* See Mr. Justice Story in the U.S. *v.* Grush, 5 Mason's Admiralty Rept, p. 298; also Pothier. tit. "Obligation," No. 92.

tradictory. It is clear, however, that we must, if possible, so interpret the clause as to make the provisions it contains consistent with each other. This is done by considering that the restriction operates to within "three marine miles *of the entrance* of a "Bay;" the proviso, however, permitting American fishermen to enter such bays or harbours for the purpose of shelter, repairing damages, or of purchasing wood, or of obtaining water, *and for no other purpose whatever.* It is clear to me, therefore, that the renunciation of "three marine miles from the coast," operated, when a line of coast was in question—and "three marine miles from the entrance of a Bay," was intended when the contour of the land enclosed a part or arm of the sea, and created that which ordinary language and geographical nomenclature denominated a "Bay."

In answer, however, to this branch of the argument, it was said, that the Article of the Treaty had reference merely to bays that were not more than six miles broad at their mouth. But there is nothing in the Treaty to justify this limitation; and it is clear, that the term "Bay," has never been restricted to enclosed pieces of water, the entrance to which was not more than six miles across. Moreover, there are several bays territorially situated within the exclusive jurisdiction of the municipal law, with mouths of much greater width than six miles, nor has it ever been even pretended that the jurisdiction of local authority over bays is so limited.* "A Bay or arm of the sea, which lies within the *fauces terræ*," says Lord Hale,† "where a man may reason-

* "This argument," says Mr. Seward, of New York, in his speech in the Senate, of August 14, 1852, "seems to me to prove too much. I think it would divest The United States of the harbour of Boston, all the land around which belongs to Massachusetts or The United States, while the mouth of the bay is six miles wide. It would surrender our dominion over Long Island Sound—a dominion which I think the State of New York and The United States would not willingly give up. It would surrender Delaware Bay; it would surrender, I think, Albemarle Sound and the Chesapeake Bay; and I believe it would surrender the Bay of Monteroy, and perhaps the Bay of San Francisco, on the Pacific coast."

† Hale's Treatise De Jure Maris et Brachiorum ejusdem. Hargreave's Tracts, chap. iv.

ably discern between shore and shore, is, or at least may be, within the body of a country;" and Mr. Justice Story* has similarly expressed himself; Mr. Webster, also, in his letter of the 6th of July, 1852, which appeared in the "Boston Courier," states, "that a bay, as is usually understood, is an *arm*, or recess of the sea, entering from the ocean between capes or headlands; and the term is applied equally to small and large tracts of water thus situated." The doctrine also of maritime jurisdiction over "Bays," in regard to their own waters, has always been strongly insisted upon by The United States, and in 1830 they rejected the application made on behalf of British fishermen of the Bahamas to fish within certain bays of the Floridas, on the ground that the fisheries within those bays were exclusively the property of the citizens of Florida; and the Committee appointed to inquire into the matter, after giving several extracts from the treatises on the laws of Nations by Vattel and Marten, conclude by saying, that "some writers have formerly contended that the right could not appertain if the fisheries were inexhaustible, and that a *necessity* must exist of this exclusive appropriation. This doctrine is, however, long since exploded, and the right recognized, as founded on the broad and arbitrary principle, that every nation has a right to such exclusive appropriation, for the extension of its commerce and even for convenience merely." "There is no subject," says Mr. J. D Westcott, Acting Governor of Florida, in his Message to the Legislative Council, of the date of January, 1832, "involved in the scope of your duties that I deem of more importance to the interests of the territory than the regulation, by law, of the valuable fisheries in the waters adjacent to the islands and keys, and in the bays and sounds, and on the coasts of our territories, and their protection from the intrusion of foreigners." It appears to me, then, to be clear that the renunciation, on the part of The United States, was of the

* De Lovio *v.* Boit, 2 Gallison's Reports, p. 426, 2nd edit.; see also United States *v.* Grush, 5 Mason's Reports, p. 300. See also Church *v.* Hubbard, 2 Cranst. Reports; Report of The United States' Attorney-General, of the 14th May, 1793, in the case of the "Grange."

right of fishing within three miles of the *entrance* of any bay, whatever the width of that entrance might be, and whether it formed a small or large arm of the sea. The next point, then, that I have to consider is, whether the Bay of Fundy—Cow Bay being clearly within Her Majesty's dominions—is or is not also to be so considered. It has been urged by the learned American Agent, that it is not within Her Majesty's dominions, because it is bounded in part by the State of Maine.

A very brief consideration, however, of the limits of the old province of Nova Scotia, as described in the Royal Commission of the 21st of November, 1763, and of the second Article of the Treaty of 1793, will sufficiently show that this argument is founded in error. The south-westward limits of the old province of Nova Scotia were determined by a line drawn from Cape Sable across the Bay of Fundy to the mouth of the River St. Croix; and according to the provisions of the second Article of the Treaty of 1793, the mouth of the River St. Croix was to be considered as within the Bay of Fundy, and that certain islands which formed part of the province of Nova Scotia were to the south of a line drawn due east from the point where the boundaries between Nova Scotia on the one hand and East Florida on the other, respectively touched the Bay of Fundy and the Atlantic Ocean. In support also of this view I am fortified by the authority of Chancellor Kent;* and indeed it must be admitted, on the part of The United States, who claim exclusive maritime jurisdiction over the waters included within lines stretching from *quite distant headlands*, as, for instance, from Cape Ann to Cape Cod, and from Nantucket to Montank Point, and from that point to the Capes of Delaware, and from the South Cape of Florida to the Mississippi, that it is no unreasonable extension of jurisdiction and dominion of Great Britain to contend that the water-line drawn from Campo Bello to Cape Sable, across the entrance of the Bay of Fundy, and resting on its course upon the Island of Grand Menan, properly defines the limits of the

* Kent's Commentaries of American Law, vol. i. p. 30.

old province of Nova Scotia. The River St. Croix now constitutes the north-western boundary of Maine, and therefore it is wholly immaterial as to what portion of the Bay of Fundy, if any, is bounded by Maine to the south of this point, as I do not understand it to have been argued that Great Britain contends for any dominion (except so far as the islands and the waters round them are concerned) three miles south of a line drawn from the mouth of the St. Croix River to Cape Sable. I think then, that I have shown that the Bay of Fundy, north of this line, whether a large arm of the sea or not, is clearly within the jurisdiction of Great Britain.

The next fallacy to which I must now briefly allude in the argument of the learned United States' Agent is in confounding the right of the free navigation of the ocean with the right of fishing within the maritime jurisdiction of another country. The jealousy with which all nations regard this right is to some extent evidenced by the refusal of The United States, in the case already alluded to, of the application relative to the Floridas; and we know, as a fact, that a liberty of fishing within the waters of an independent State has always been a matter of arrangement by Treaty between nations. If, then, I have established that the waters of the Bay of Fundy on the north-east of the water-line to which I have referred are within the dominions of the Queen of Great Britain, it is clear that American fishermen cannot fish therein, unless they are specially permitted by the terms of a Treaty. The Bay of Fundy however is not specified in the Treaty of 1818 as one of those Bays within Her Majesty's dominions, in which American fishermen are to have liberty to fish; and they are consequently, upon the principle of the general rights growing out of the law of nations, excluded.

In rejecting, however, these claims, I cannot help expressing my opinion, that in face of the Treaty which has just been concluded between the two countries on this subject, they ought not to have been presented to us for our action. By the recent Treaty of 1854, neither country is supposed to

yield to the other the position which it had taken with respect to the Treaty of 1818; it is essentially in the nature of a compromise, in which neither party admits it is wrong, but both agree to get rid of all cause of complaint by mutual concessions; and it appears, therefore, to me to have been intended that all questions which had arisen under the different interpretations which had been put upon the first Article of the Treaty of 1818 were to be allowed to drop *sub silentio;* and, under these circumstances, my opinion is, that the claims in question, while clearly unsustainable on their merits, are also improperly preferred.

Claim of the Schooner "Washington."

Mr. Upham, American Commissioner:

In 1843 the fishing schooner "Washington" was seized by Her Britannic Majesty's cruiser, when fishing, broad, as it is termed, in what is called the Bay of Fundy, ten miles from the shore.

This seizure was justified on two grounds:—

1. That the Bay of Fundy was an indentation of the sea, extending up into the land, both shores of which belonged to Great Britain, and that for this reason she had, by virtue of the law of nations, the exclusive jurisdiction over this sheet of water, and the sole right of taking fish within it.

2. It was contended that, by a fair construction of the Treaty of October 20th, 1818, between Great Britain and The United States, The United States had renounced the liberty, heretofore enjoyed or claimed, to take fish on certain bays, creeks, or harbours, including, as was contended, the Bay of Fundy, and other similar waters within certain limits described by the Treaty.

The Article containing this renunciation has various other provisions supposed to throw some light on the clause of renunciation referred to. I therefore quote it entire, which is as follows:—"Whereas differences have arisen respecting the liberty claimed by The United States, to take, dry, and cure fish on certain *coasts*, *bays*, harbours, and creeks of His Britannic Majesty's dominions *in America*, it is agreed that the inhabitants of The United States shall have, in common with the subjects of Her Britannic Majesty, the liberty to take fish on certain portions of the Southern, Western, and Northern *coast* of Newfoundland, and also on the *coasts*, *bays*, harbours, and creeks from Mount Joly on the Southern *coast* of Labrador to and through the Straits of Belle Isle, and

thence northwardly indefinitely along *the coast*; and that the American fishermen shall have liberty to dry and cure fish in any of the unsettled *bays*, harbours, and creeks of said described *coasts*, until the same become settled. And The United States renounce the liberty *heretofore enjoyed* or claimed by the inhabitants thereof, to take, dry, or cure fish, on or within three marine miles of any of *the coasts*, *bays*, creeks, or harbours of His Britannic Majesty's dominions *in America*, not included within the above-mentioned limits: provided, however, that the American fishermen shall be admitted to enter *such bays* or harbours for the purpose of *shelter, and of repairing damages therein, of purchasing wood, and of obtaining water*, and for no other purpose whatever. But they shall be under such restrictions as may be necessary to prevent their taking, drying, or curing fish therein, or in any other manner whatever abusing the privileges hereby reserved to them."

The first ground that has been taken in the argument of this case is that, independent of this Treaty, Great Britain had the exclusive jurisdiction over the Bay of Fundy, as part of her own dominions by the law of nations. As this matter, however, is settled by the Treaty, the position seems to have no bearing on the case, except as it may tend to show that The United States would be more likely to renounce the right of fishing within limits thus secured to Great Britain by the law of nations, than if she had no such claim to jurisdiction.

But on this point we are wholly at issue. The law of nations does not, as I believe, give exclusive jurisdiction over any such large arms of the ocean.

Rights over the ocean were orginally common to all nations, and they can be relinquished only by common consent. For certain purposes of protection and proper supervision and collection of revenue, the domain of the land has been extended over small enclosed arms of the ocean, and portions of the open sea, immediately contiguous to the shores. But beyond this, unless it has been expressly relinquished by Treaty, or other manifest assent, the original

right of nations still exists, of free navigation of the *ocean*, and a free right of each nation, to avail itself of its common stores of wealth or subsistence.—*Grotius, Book* 2, *ch.* 2, *sec.* 3; *Vattel, Book* 1, *ch.* 20 *secs.* 282 *and* 3.

Reference has been made to the Chesapeake and Delaware Bays, over which The United States has claimed jurisdiction, as cases militating with this view; but those bays are the natural outlets and enlargements of large rivers and are shut in by projecting headlands, leaving the entrance to the bays of such narrow capacity as to admit of their being commanded by forts, and they are wholly different in character from such a mass of the ocean-water as the Bay of Fundy.

There is no principle of the law of nations that countenances the exclusive right of any nation in such an arm of the sea. Claims in some instances have been made of such rights, but they have been seldom enforced or acceded to.

This is well known to be the prevailing doctrine on the subject in America, and it would have been surprising if The United States negotiators had relinquished voluntarily, the large portions of the ocean now claimed by Great Britain as her exclusive right, under the provisions of this Treaty, on the ground that it was sanctioned by the law of nations.

It would have been still more surprising if it had been thus relinquished, after its long enjoyment by the inhabitants of America in *common*, from the time of their first settlement down to the Revolution, and from that time, by The United States and British Provinces, from the Treaty of 1783 to that of 1818.

I see, therefore, no argument, in the view which has been suggested, to sustain the right of exclusive jurisdiction claimed by England.

2. I come now to the consideration of the *second* point taken in the argument before us, which is that, by the Treaty of 1818, The United States *renounced* the right of taking fish within the limits now in controversy. This depends on the construction to be given to the Article of the Treaty, which I have already cited.

In the construction of a Treaty, admitting of controversy

on account of its supposed ambiguity or uncertainty, there are various aids we may avail ourselves of in determining its intepretation.

"It is an established rule," says Chancellor Kent, "in the exposition of statutes," and the same rule, I may add, applies to Treaties, "that the intention of the lawgiver is to be deduced from a view of the whole, and of every part of a statute, taken and compared together, and the real intention, when accurately ascertained, will always prevail over the literal sense of the terms."

He further says, "when the words are not explicit, the intention is to be collected from the occasion and necessity of the law, from the mischief felt, and the remedy in view; and the intention is to be taken or presumed, according to what is consonant to reason and good discretion."—1 *Kent's Com.* 462.

Now, there are various circumstances to be considered in connection with the Treaty that will aid us in coming to a correct conclusion as to its intent and meaning.

These circumstances are the entire history of the Fisheries; the views expressed by the negotiators of the Treaty of 1818, as to the object to be effected by it; the subsequent practical construction of the Treaty for many years; the construction given to a similar Article in the Treaty of 1783; the evident meaning to be gained from the whole Article taken together; and from the term "*coasts*," as used in the Treaty of 1818, and other Treaties in reference to this subject. All these combine, as I believe, to sustain the construction of the provisions of the Treaty as contended for by The United States.

It will not be contested that the inhabitants of the territory now included within The United States, as a matter of history, have had generally the common and undisturbed right of fishery, as now claimed by them, from the first settlement of the Continent down to the time of the Revolution, and that it was subsequently enjoyed in the same manner, in common by The United States and the British Provinces, from the Treaty of 1783 down to the Treaty of 1818.

This right was based originally on what Dr. Paley well regards, in his discussion of this subject, "as a general right

of mankind;" and the long and undisturbed enjoyment of it furnishes just ground for the belief that The United States' negotiators would be slow in relinquishing it. They certainly would not be likely to relinquish more than was asked for, or what The United States' negotiators a few years before contended was held by the same tenure as the National Independence of The United States, and by a perpetual right.

In the negotiation of the Treaty of Peace of 1814 no provision was inserted as to the Fisheries. Messrs. Adams and Gallatin notified the British Commissioners that "The United States claimed to hold the right of the Fisheries by the same tenure as she held her Independence, that it was a perpetual right appurtenant to her as a nation, and that no new stipulation was necessary to secure it."

The negotiators on the part of the British Government did not answer this declaration, or contest the validity of the ground taken.

Afterwards, in 1815, the consultations had between Lord Bathurst and Mr. Adams, the then Secretary of State, relative to the Fisheries, show on what grounds negotiations were proposed, which were perfected by the Treaty of 1818; and that the renunciation desired, from the Treaty of 1783, consisted of the *shore* or *boat fisheries*, which are prosecuted within a marine league of the *shore*, and of no others.

At the first interview of the Commissioners, Lord Bathurst used this distinct and emphatic language:—"As, on the one hand, Great Britain cannot permit the vessels of The United States to fish within the creeks and *close upon the shores* of the British territories, so, on the other hand, it is by no means her intention to interrupt them in fishing anywhere in the open sea, or without the territorial jurisdiction, *a marine league from the shore*."

Again, he said, on a subsequent occasion. "It is not of fair competition that His Majesty's Government has reason to complain, but of the pre-occupation of British *harbours* and *creeks*."—*Sabine's Report on Fisheries, p.* 282.

It is clear that it was only within these narrow limits the British Government designed to restrict the Fisheries by the citizens of The United States.

The views of Messrs. Gallatin and Rush, the American negotiators of the Treaty of 1818, appear from their communication made to the Secretary of State, Mr. Adams, immediately after the signature of the Treaty.

In this communication they say—"The renunciation in the Treaty expressly states that it is to extend only to the distance of three miles from the coast; and this point was the more important, as, with the exception of the fisheries IN OPEN BOATS IN CERTAIN HARBOURS, it appeared that the fishing-ground on the *whole coast of Nova Scotia* was more than three miles from the shore."

It thus appears that the negotiators of both Governments combined, at the time of making the Treaty, in giving to it the intent and meaning now contended for by The United States.

It further appears, that such was the intent and effect of the Treaty of 1818, from the fact that the construction practically given to it for more than twenty years, and, indeed, down to the year 1842, conformed to the views of the negotiators as thus expressed. See *Sabine's Report, p.* 294.

There are certain circumstances also appearing in the case which show the evident reluctance of the British Government to assert the exclusive pretensions ultimately put forth by them, and that they had been goaded to it, against their better sense, as to the construction of the Treaty, by jealousies and laws of the colonists of a very unusual character, and which Great Britain was slow to sanction. And when she ultimately concluded to assert this claim, she tendered with it propositions for new negotiations, by which all matters connected with the colonies should be amicably adjusted.

I shall now consider the construction given to similar words of the Treaty of 1783.

It will not be denied that the words used in the Treaty of 1783 and the Treaty of 1818, where they are identical, and where express reference is made to the provisions of the

former Treaty, mean the same thing. When The United States is said, in the Treaty of 1818, to *renounce* the liberty *heretofore enjoyed and claimed*, it means the liberty heretofore enjoyed under the Treaty of 1783; and the liberty *then* enjoyed was to take fish "*on certain bays and creeks*," without any limitations as to distance from them.

Now, what were *those bays and creeks* ON which, that is, *along the line of which*, drawn from headland to headland, the citizens of The United States were allowed to take fish under the Treaty of 1783? It cannot be pretended that *the bays and creeks* there intended were any other than small indentations from the great arms of the sea. They certainly did not include the Bay of Fundy and other large waters. Because if fishing was allowed merely ON that Bay, as is now contended, that is, on and along the line of the Bay from headland to headland, then all fishing *within* the Bay of Fundy would be excluded. But it is a well-known fact that the suggestion never was made, or a surmise raised, that the expressions used in the Treaty of 1783 permitted the fishermen of The United States to go merely to the line of the Bay of Fundy, and restricted them from fishing within it.

A practice, therefore, for thirty-five years under this Treaty of 1783 had determined *what classes of bays and creeks* were meant by the expressions there used.

The Treaty of 1818 *renounced* the liberty *heretofore* enjoyed of fishing on these *identical bays and creeks*, that is, immediately on the line of them; and also further renounced the liberty of fishing *within a space of three miles of them*. But *the bays and creeks* here referred to were the same as those referred to in the Treaty of 1783, and neither of them ever included the Bay of Fundy.

The express connection between these two Treaties is apparent from the face of them. Reference is made to the Treaty of 1783 in a manner that cannot be mistaken; the subject matter is the same, and the language, as to the point in question, identical.

I contend, therefore, that the Governments, in adopting the language of the Treaty of 1783 in the Treaty of 1818

received the words with the construction and application given to them up to that time, and that neither party can now deny such construction and application, but is irrevocably bound by it.

There are other portions of the Article in question that aid in giving a construction to the clause under consideration, and that irresistibly sustain the view I have adopted.

Thus, it is provided, in another portion of the *same Article*, in reference to these *same creeks and bays*, that the fishermen of The United States shall be admitted to enter "SUCH *bays*," *for the purpose of shelter and to obtain wood and water*; thus clearly implying that such bays are small indentations extending into the land, to which fishing craft would naturally resort for *shelter, and to obtain wood and water*, and not large open seas like the Bay of Fundy.

There are numerous bays of this character, along the coast, within the Bay of Fundy; such as the Bay of Passamaquoddy, Annapolis, St. Mary's Chignecto, Mines Bay, and other well-known bays extending up into the land.

There is a further argument to sustain the American construction given to the Treaty, derived from the meaning affixed to the term "*coasts*," as applied by the usage of the country, and which was adopted and embodied in the various Treaties between France and England from a very early period, and has been continued down to the present time.

I have not seen this argument adverted to; but it seems to me important, and, indeed, of itself quite conclusive as to the matter in question, and I shall now consider it.

The term "*coasts*," in all these prior Treaties, is applied to all the borders and shores of the Eastern waters, not only along the mainland, but in and about the Gulf of St. Lawrence, and around all the larger and smaller islands where fisheries were carried on.

These coasts are thus defined and specified in the Treaty

of Utrecht between Great Britain and France in 1713, of Paris in 1763, and other Treaties to the present time. In the Treaty of Utrecht between France and England, the liberty of taking and drying fish is allowed "on the *coasts* of Newfoundland;" provision is also made as to the fisheries on the *coasts*, in the *mouth*, and in the *Gulf of* St. Lawrence.

Reference is made to these "*coasts*" in the same manner in the Treaty of Paris, which took place after the conquest of Canada. The French are permitted by this Treaty to fish in *the Gulf* of St. Lawrence at a given distance from all "*the coasts*" belonging to Great Britain, as well those "of the Continent" as those "of the *islands* situated in the Gulf of St. Lawrence." The fishery, also, "*on the coasts*" of the comparatively small island "of Cape Breton out of said Gulf" is regulated and provided for; and, further, it is provided "that the fishery on the *coasts of Nova Scotia*, or Acadia, and everywhere else, out of the said Gulf, shall remain on the footing of former Treaties."

Now, I regard it as utterly impossible for any one looking at these Treaties, with the map of the islands and waters in the Gulf or Bay of St. Lawrence, and in and around Nova Scotia, referred to in these Treaties, to doubt for a moment that the term "*coasts*" was designed to apply and did, in terms, apply to the whole contour of the mainland and the islands referred to, including the entire circuit of *Nova Scotia on the Bay of Fundy*.

These expressions are continued in the same manner in the Treaty of 1783. The United States are there allowed to take fish in the Gulf of St. Lawrence, "on *the coast* of Newfoundland," and also "on the *coasts*, bays, and creeks of all other of His Britannic Majesty's dominions in America."

Again, in the preamble to the Treaty of 1818, which we are now considering, it is said to have been caused by differences as to the liberty claimed to take fish on certain COASTS, bays, harbours, and creeks of His Britannic Majesty's dominions in America, and by the Treaty provision is made as to the fisheries on *the coasts* of Newfoundland, and on "*the coasts*, bays, harbours, and creeks from Mount Joly, on

the southern coast of Labrador, to and through the straits of Belle Isle, and thence northwardly indefinitely along the *coast*; and then follows the renunciation from *the right before enjoyed* by The United States "to take, dry, or cure fish on or within three marine miles of any of THE COASTS, bays, creeks, or harbours of His Majesty's dominions in America."

It seems to me undeniable that the term *coasts* in all these Treaties was well defined and known. The outlet of the St. Lawrence is equally well known by the term bay or gulf. The shores on that bay or gulf, and on the islands within it, are uniformly spoken of as "*coasts*;" and the same mode of designating the shores along this entire country is used in all these Treaties in reference to the various waters where fisheries were carried on.

"The coasts" named in these Treaties were not only the coasts of the Bay or Gulf of St. Lawrence, and of the Island of Cape Breton, but extended from the head of the Bay of Fundy along the bay entirely around Nova Scotia to the Gulf or Bay of St. Lawrence.

There never had been any misunderstanding as to the application of this term, or denial of the right to fish on these coasts, as I have named them, under all these Treaties down to 1818. The term coasts, as applied to Nova Scotia during this long period, was as well known and understood as the term "coasts" applied to England or Ireland; and it included the coasts on the Bay of Fundy as fully and certainly as the term coasts of England applies to the coasts of the English Channel. It was a fixed locality, known and established, and the right of taking fish had always been "enjoyed there."

When, therefore, the Treaty of 1818 "renounced the liberty, *heretofore enjoyed*, of taking fish within three marine miles of any of THE COASTS, bays, creeks, etc. of His Britannic Majesty's dominions," the renunciation was, for this distance from a fixed locality, as fully settled and established as language, accompanied by long and uninterrupted usage, could make it.

"The coasts" named are those of 1783 and of prior

Treaties, and the renunciation of three miles was to be reckoned from these coasts. The Bay of Fundy was, therefore, not excluded from the fishing grounds of The United States.

The annexed sketch of the Gulf or Bay of St. Lawrence, with the adjoining waters and coasts, will show how the term coasts was practically applied under all the Treaties referred to prior to 1818.

I am not aware of any reply to the points here taken that I think can at all invalidate them.

From the papers filed in the case, it appears that in 1841 the Province of Nova Scotia caused a case stated to be drawn up and forwarded to England, with certain questions to be proposed to the law officers of the Crown.

One inquiry was, whether the fishermen of The United States have any authority to enter any of *the Bays of that Province* to take fish. These officers, Messrs. Dodson and Wilde, reply that no right exists to enter the bays of Nova Scotia to take fish, "as they are of opinion the term headland is used in the Treaty to express the part of the land excluding the interior of the bays and inlets of the coasts."

Now, it so happens that no such term is used in the Treaty, and their decision, based on it, falls to the ground.

They were also specifically asked to define what is to be considered a headland. This they did not attempt to do. The headlands of the Bay of Fundy have never been defined or located, and, from the contour of the bay, no such headlands properly exist.

These officers held that the American fishermen, for the reason named, could not enter the bays and harbours of Nova Scotia. But the Bay of Fundy is not a bay or harbour of the Province of Nova Scotia, and was never included in its limits. The Bay of Fundy is bounded on one side by Nova Scotia, and on the other by New Brunswick, and it is not clear that either the question proposed, or answer given, was designed to include this large arm of the sea.

It is also said, that Mr. Webster has conceded the point in issue in a notice given to American fishermen. The claims now asserted were not to put forth till many years after the Treaty of 1818; and it was not till 1852 the British Government gave notice that seizures would be made of fishermen taking fish in violation of the construction of the Treaty of 1818, as then claimed by them, when Mr. Webster, to avoid the collisions that might arise, issued a notice setting forth the claims put forth by England.

In one part of his notice he says:—"It was an oversight to make so large a concession to England," but closes by saying:—"Not agreeing that the construction put upon the Treaty by the English Government is conformable to the intentions of the contracting parties, this information is given that those concerned in the fisheries may understand how the concern stands at present, and be upon their guard."

Mr. Webster subsequently denied relinquishing in any manner by this notice the rights of The United States, as claimed under this Treaty.

Detached expressions quoted from it, to sustain a different opinion, can hardly be regarded, under such circumstances, as an authority.

I have seen no other argument or suggestions tending, as I think, to sustain the grounds taken by the British Government.

On the other hand, I have adverted briefly, as I proposed, to the history of the fisheries; the views expressed by the negotiators of the Treaty of 1818, as to the object to be effected by it; the subsequent practical construction of it for many years; the construction given to a similar article in the Treaty of 1783; the evident meaning to be gained from the entire Article of the Treaty taken together; and from the term "coasts" as used in the Treaty of 1818, and other Treaties in reference to this subject; and the whole combine, as I believe, to sustain the construction contended for by The United States.

I am, therefore, of opinion, the owners of the "Washington"

should receive compensation for the unlawful seizure of that vessel by the British Government, when fishing more than three miles from the shore or coast of the Bay of Fundy.

The "Washington."

London, 23rd December, 1854.

The umpire reports that this vessel was seized by the revenue schooner "Julia," Captain Darby, while fishing in the Bay of Fundy, 10 miles from the shore, on the 10th of May, 1843, on the charge of violating the Treaty of 1818, carried to Yarmouth, N.S. and there decreed forfeited to the Crown by the Judge of the Vice Admiralty Court, and, with her stores, ordered to be sold. The owners of the "Washington" claim for the value of the vessel and appurtenancy outfits, and damages 2483 dollars, and for eleven years' interest 1638 dollars, amounting together to 4121 dollars. By the recent reciprocity Treaty happily concluded between The United States and Great Britain, there seems no chance for any future disputes in regard to the fisheries; it is to be regretted, therefore, that in that Treaty provision was not made for settling a few small claims of no importance in a pecuniary sense; as they have not been settled, they have been brought before this Commission.

The "Washington" fishing schooner was seized as before stated in the Bay of Fundy, ten miles from the shore, off Annapolis, Nova Scotia.

It will be seen by the Treaty of 1783, between Great Britain and The United States, that the citizens of the latter in common with the subjects of the former enjoyed the right to *take* and *cure fish* on the shores of all parts of Her Majesty's dominions in America used by British fishermen, but not to dry fish on the Island of Newfoundland, which latter privilege was confined to the shores of Nova Scotia in the following words "And American fishermen shall have liberty to dry and cure fish on any of the unsettled bays, harbours and creeks of Nova Scotia, but as soon as said shores shall become settled, it shall not be lawful to dry or cure fish at such settlement without a previous agreement

for that purpose with the inhabitants, proprietors, or possessors of the ground."

The Treaty of 1818 contains the following stipulations in relation to the fishery :—

"Whereas differences have arisen respecting the liberty claimed by The United States to *take, dry* and *cure* fish on certain *coasts, bays, harbours,* and *creeks* of His Britannic Majesty's dominions *in America,* it is agreed that the inhabitants of The United States, shall have, in common with the subjects of His Britannic Majesty, the liberty to fish on certain portions of the southern, western, and northern coast of Newfoundland, and also on the coasts, bays, harbours and creeks from Mount Joly on the southern coast of Labrador, to, and through the Straits of Belle Isle, and thence northwardly, indefinitely along the coast; and that American fishermen shall have liberty to dry and cure fish in any of the unsettled bays, harbours and creeks of said described coasts until the same become settled; and The United States renounce the liberty *heretofore enjoyed* or claimed by the inhabitants thereof, to take, dry or cure fish *on, or within three marine miles* of any of the coasts, bays, creeks or harbours of His Britannic Majesty's dominions in America, not included in the above mentioned limits, provided however, that the American fishermen shall be admitted to enter such bays or harbours for the purpose of shelter and of repairing damages therein, of purchasing wood and of obtaining water, and for no other purpose whatever; but they shall be under such restrictions as may be necessary to prevent their taking, drying, or curing fish therein, or in any other manner whatever abusing the privileges hereby reserved to them."

The question turns so far as relates to the Treaty stipulations on the meaning given to the word "Bays" in the Treaty of 1783. By that Treaty, the Americans had no right to dry and cure fish on the shores and *bays* of Newfoundland, but they had that right on the coasts, *bays, harbours* and *creeks* of Nova Scotia, and as they must land to cure fish on the shores, bays and creeks, they were evidently admitted to the *shores of the bays, &c.* By the Treaty of 1818, the

same right is granted to cure fish on the coasts, bays &c., of Newfoundland; but the Americans relinquished that right *and the right to fish within three miles* of the *coasts, bays, &c., of Nova Scotia.* Taking it for granted, that the framers of the Treaty intended that the words "Bay or Bays" should have the same meaning in all cases, and no mention being made of Headlands, there appears no doubt that the "Washington" in fishing ten miles from the shore violated no stipulations of the Treaty. It was urged on behalf of the British Government, that by coasts, bays, &c., is understood an imaginary line drawn along the coast from headland to headland, and that the jurisdiction of Her Majesty extends three marine miles outside of this line, thus closing all the bays on the coast or shore, and that great body of water called the Bay of Fundy against Americans and others, making the latter a British Bay; this doctrine of headlands is new, and has received a proper limit in the Convention between France and Great Britain of 2nd August, 1839, in which "It is equally agreed that the distance of three miles fixed as the general limit for the exclusive right of fishery upon the coasts of the two countries, shall, with respect to bays, the mouths of which do not exceed ten miles in width, be measured from a straight line drawn from headland to headland."

The Bay of Fundy is from 65 to 75 miles wide, and 130 to 140 miles long; it has several bays on its coasts, thus the word bay as applied to this great body of water has the same meaning as that applied to the Bay of Biscay, the Bay of Bengal, over which no nation can have the right to assume the sovereignty. One of the headlands of the bay of Fundy is in The United States, and ships bound to Passamaquoddy, must sail through a large space of it. The Islands of Grand Menan (British) and Little Menan (American) are situated nearly on a line from headland to headland. These islands as represented in all geographies, are situated in the Atlantic Ocean. The conclusion therefore is irresistable, that the Bay of Fundy is not a British Bay, nor a bay within the meaning of the word as used in the Treaties of 1783 and 1818.

The owners of the "Washington," or their legal represen-

tatives are therefore entitled to compensation, and are hereby awarded, not the amount of their claim which is excessive, but the sum of three thousand dollars, on the 15th January, 1855.

JOSHUA BATES, *Umpire.*

THE "ARGUS."

London, 23rd December, 1854.

THE umpire reports, that, the schooner "Argus," 55 tons burthen, was captured on the 4th August, 1844, while fishing on St. Ann's Bank, by the revenue cruizer, "Sylph," of Lunenburg, Nova Scotia, commanded by William Carr; Phillip Dod, seizing master, carried to Sidney where she was stripped, and everything belonging to her sold at auction. At the time of the capture, the "Argus" was stated on oath to have been twenty-eight miles from the nearest land, Cape Smoke; there was, therefore, in this case no violation of the Treaty of 1818: I, therefore, award to the owners of the Argus, or their legal representatives for the loss of their vessel, outfits, stores and fish, the sum of two thousand dollars on the 15th January, 1855.

JOSHUA BATES, *Umpire.*

The "Baron Renfrew."

Mr. Hornby, British Commissioner:

This Case comes before us under the following circumstances:—It appears that the "Baron Renfrew," of the burden of 1126 tons, was seized by the Collector of Customs at the port of San Francisco, in the State of California, on the 11th of August, 1852. The libel was for the forfeiture of the vessel under the 50th section of the Act of 1799. Previous to this seizure, or rather contemporaneously with it, the mate (who at the time however was acting Captain, that officer having died on the voyage) was arrested in another suit under the 45th section of the same Act, on a charge of having smuggled some ship-stores. The offence was proved, and the rice, which had been bought in China for about 54 dollars, being the stores alleged to have been smuggled, having been sold under a decree of condemnation and forfeiture for 2000 dollars, the Captain became liable in the sum of 6000 dollars; and being unable to find bail, he was committed to prison, where he remained.

It appears from the evidence and the judgment of the Court, that the arrest of the Captain and the seizure of the vessel were for the same offence; the Act however of 1799 drawing a distinction between the smuggling of "*stores*" and the smuggling of "*goods, wares, and merchandize,*" and awarding a distinct and separate punishment for each offence, the same identical bags of rice were denominated "stores" in the charge against the Captain, and "goods, wares and merchandize," in the libel against the ship. Thus for the same offence it was sought to fine and punish the master, and also to forfeit the ship. The provisions of the Act of 1799 however were not cumulative; that is to say, if the articles smuggled were "stores," the ship was not liable to

seizure; if, on the other hand, they were "goods, etc.," then, although the Captain was punishable to a certain extent, yet the "ship" was liable to forfeiture. Of this there could be no doubt. It is in fact impossible to find provisions more clear or explicit. The moment therefore it was ascertained that "stores" were smuggled, there could be no pretence for libelling the ship; and of the fact that it was "stores" that were smuggled, there could be no doubt, because the Captain was convicted of the offence under the 45th section. Moreover, as Judge Hoffman observed on the trial of the case, "It was not denied that the rice was landed without a permit, nor that it was taken on board *bonâ fide* for the use of the passengers on board, nor that what remained was 'remaining sea stores' according to the 23rd section of the Act of 1799. It was further admitted that it was reported as such by the master, according to the 30th section, and ascertained to be such according to the 45th section; and the master was permitted to clear with it by the collector as 'sea stores.'"

After this then it is impossible not to hold that the libelling of the vessel was vexatious, and without any probable cause.

The "*fact*" relative to the smuggling, or the nature of the goods smuggled, was not doubtful, for the Court had convicted the master of the offence: the "construction of the law" was not doubtful, for the Act is perfectly explicit on the subject: nor did the circumstances warrant suspicion, for they were all known by the trial of the master.

There was therefore no reasonable pretext for granting the certificate of probable cause, and the Judge, in my opinion, was perfectly right in refusing it.

To the wrong done to the owner of the vessel, by this wholly unauthorized seizure of his ship, The United States' Attorney added another injury, by appealing against the judgment of the District Court to the Supreme Court of The United States. The effect of this course was to detain the ship for some months; but it does not clearly appear that this appeal was ever prosecuted, the order of release coming direct from the Department of State, and apparently in consequence of a representation by the British Government.

I had hoped that, in awarding to the claimant a fair sum in respect of the damages sustained by him in consequence of the seizure of his ship and its detention, I should have had the full concurrence of my colleague, as in the case of the American ship "Jones" on the coast of Africa, he expressed a strong opinion on the impropriety of the captors appealing against the judgment of the Vice-Admiralty Court of Sierra Leone decreeing the restitution of the vessel. This case is even stronger than that, for it did not appear in the case of the "Jones" that the appeal, which was never formally entered, had any effect upon the vessel; whereas in the present, the detention consequent on it is admitted. In the case also of the "Jones" he repudiated the notion of the claimant or his agents giving security for costs not amounting to 100*l*, on the ground of the intervening distance. I think that the same reason would apply here with greater force, as it would have been necessary for the claimant, "*with one or more sureties*," to have given a bond in the penal sum of 46,000 dollars, the amount at which the court appraised the value of the vessel. Nor do I understand that it is the custom of merchants or their consignees to give bonds under similar circumstances to those attending the seizure of the "Baron Renfrew."

In estimating the damages sustained by the claimant I find some difficulty, as there is no evidence offered by the Government of The United States in rebuttal of his estimate; and although it is supported by oath, and appears to be in every respect entitled to belief, I feel that it is still *ex parte*. It would have been more satisfactory to me, had the learned United States' Agent been prepared with some evidence. In the absence of it however, it is my duty to decide upon that which is offered, and which appears to be properly authenticated: I adjudge therefore to the claimant the sum of 27,250 dollars, in full satisfaction of all claims upon the Government of The United States.

Mr. Upham, American Commissioner, did not deliver any written judgment in this case.

The "Baron Renfrew."

London, 23rd December, 1854.

The umpire [illegible]ts that this vessel was seized at San Francisco on [illegible] charge of smuggling, and libelled in the District Court of The United States. At the trial, it was shown that the merchandize smuggled (59 or 99 bags of rice) had been entered on the manifest of the ship as stores, and according to the laws of The United States, the smuggling of stores does not involve the forfeiture of the ship. She was accordingly cleared and restored to the claimants by Decree of the Court. The District Attorney held a different opinion, and appealed to the Supreme Court of The United States. The rice was condemned as forfeited, and the Captain of the ship incurred the penalty of three times the value (the rice sold for 2200 dollars) which being unable to pay, he was imprisoned. At Washington, the judgment of the District Court was confirmed, and the ship finally delivered up. The ship had been valued for bonding at 23,000 dollars, but for some reason, the claimant's Agents did not see fit to give bond.

The vessel was seized August 6th, 1852.

The libel was dismissed September 21st. 1852.

In custody of the Marshal four months and twenty-seven days; deducting the time from the 6th of August to the 21st of September, for which no reasonable claim for detention can be made; there appears to have been a detention of three months and-a-half, for which, and for a portion of legal expenses, I award to Duncan Gibb, Esquire, and owners of the ship "Baron Renfrew," or their legal representatives, the sum of six thousand dollars, on the fifteenth January, 1855.

JOSHUA BATES, *Umpire.*

The Brig "Enterprize."

The brig "Enterprize" sailed from Alexandria, in the District of Columbia, on the 22nd of January, 1835, for Charleston, South Carolina.

She had on board seventy-three slaves, besides the owners of the vessel. She encountered severe weather on her passage, was driven from her course, and ultimately put into Port Hamilton, in Bermuda, to refit and procure provisions, in order to enable her to proceed on her voyage.

While in port, the slaves claimed and obtained their liberty.

A claim was subsequently made for indemnity, under the circumstances in which the vessel entered into port; and after much correspondence between the Governments in reference to it, the claim was still pending at the time the Convention was entered into, and it was then presented for adjustment by the Commission.

Hannen, agent and counsel for Great Britain, resisted the claim on the several grounds following, viz:

1. That laws have no force in themselves beyond the territory of the country by which they are made.

2. That, while by the comity of nations, the laws of one country are, in some cases, allowed by another to have operation within its territory when it is so permitted, the foreign law has its authority in the other country from the sanction given to it there, and not from its original institution.

3. That every nation is the sole judge of the extent and the occasions on which it will permit such operation, and is not bound to give such permission when the foreign law is contrary to its interests or its moral sentiments.

4. That England does not admit within its territory the

application of any foreign law establishing slavery, having abolished the *status* of slavery throughout her dominions.

5. He contended that the condition of apprenticeship, as permitted to remain in the West India Islands, formed no exception to the abolition of slavery throughout the British dominions, as it was a system entirely different from slavery, and would not justify sustaining any other description of slavery.

6. That the liberty of any individual in British territory could not be restrained without some law to justify such restraint, and that neither the apprentice law nor any other law could be appealed to, to justify the detention of these negroes.

7. That slavery was not a relation which the British Government, by the comity of nations, was bound to respect.

The "Enterprize."

Mr. Hornby, British Commissioner:

The facts in this case are shortly as follows:—During the early part of the year 1835 the American brig "Enterprize," having on board a large number of slaves while on her voyage from Alexandria, in the district of Columbia, to Charlestown, in South Carolina, was driven from her course by prevailing contrary winds, and *being, by the delay thus occasioned, in want of provisions, put into the port of Hamilton*, in the Bermudas. On her arrival she was boarded by the Colonial authorities, and taken possession of on the ground of having slaves on board. Possession however was given up on the authorities being informed of the circumstances under which the vessel had put in.

Before however the ship could leave the harbour, a writ of Habeas Corpus was obtained, at the instance of an Association of Free Blacks in the Island, and served upon the Captain, requiring his appearance before the court, and the production of the slaves still remaining on board. Upon the argument of the case the court declared that there was no law authorizing the detention of the slaves, and they were accordingly set at liberty

Under these circumstances The United States' Government claim compensation at the hands of the British Government in respect of the loss sustained by the owners of the slaves by their release, basing their demand on the following propositions:*—"That a vessel on the high seas, in time of peace, engaged on a lawful voyage, is, according to the law of nations, under the exclusive jurisdiction of the

* United States' Senate Resolutions, March, 1840.

State to which she belongs; and that *if such vessel is forced by stress of weather, or other unavoidable circumstance*, into the port of a friendly power, her country in such case loses none of the rights appertaining to her on the high seas, either over the vessel or the personal relations of those on board."

Mr. Webster, in his letter to Lord Ashburton, on the 1st of August, 1842, states the second of these propositions in somewhat different language; he says:—"If a vessel be driven by weather into the port of another nation, it would hardly be alleged by any one that, by the mere force of such arrival within the waters of the State, the law of that State would so attach to the vessel as to affect existing rights of property between persons on board, whether arising from contract or otherwise. The local law would not operate to make the goods of one man to become the goods of another man; nor ought it to affect their personal obligations or existing relations between themselves."

It is undoubtedly true, as a general proposition, that a vessel driven by a stress of weather into a foreign port is not subject to the application of the local laws, so as to render the vessel liable to penalties which would be incurred by having voluntarily come within the local jurisdiction. The reason of this rule is obvious, It would be a manifest injustice to punish foreigners for a breach of certain local laws, unintentionally committed by them, and by reason of circumstances over which they had no control.

Thus, to cite one of the most ordinary instances in which the rule is applied. A storm drives a vessel, having a perfectly legal cargo according to the laws of the country from which it sailed or to which it is bound, into the port of a country where such a cargo is illegal and contraband. To subject this cargo to the same penalty as if it were clandestinely smuggled, would be unjust. Our law therefore says:—The laws of the country which gives you a national character shall be considered as protecting you, and if it is not an illegal cargo in your own country, it shall not be so considered in the country into which you have been involuntarily brought."

And this is precisely what was done in the case of the "Enterprize." The cargo was legal according to the laws of America—illegal according to the laws of England; and if brought within British jurisdiction, it rendered the vessel liable to confiscation. It was brought within that jurisdiction, but under circumstances which exempted it from the penalty; and accordingly, so far the rule of international law was admitted and allowed to prevail. But more is demanded; for the claim is for indemnity because the cargo had, by mere act and operation of natural law and of English law, resumed a character denied it by American law. While the vessel is, to the extent alluded to, free from the operation of the local laws, it by no means follows that it is entitled to absolute exemption from the local jurisdiction; as, for example, it can scarcely be contended that persons on board the vessel would not be subject to the local jurisdiction for crimes committed within it. If acts of violence were committed on board against subjects of the country to which the port belonged, or if a subject should be wrongfully detained on board, the local tribunals would be entitled to interfere, to preserve the peace or protect the injured person. This position may be illustrated by the law applicable to the case of vessels of war entering a foreign port. It is admitted by most, if not all, of the writers on international law, that national vessels are exempt from the local law (see the case of the "Santissima Trinidad," 7 *Wheaton*, 352; *Wheaton's International Law, vol.* i. *p.* 115; *Phillimore's Comm. on International Law, p.* 368 *and p.* 373. They are, as it were, entitled to a species of extra-territoriality; yet it has been held by the Executive of The United States, on the authority of two Attorneys-General,* that a foreign vessel of war entering its harbour is not entitled to absolute exemption from its jurisdiction.

"The ports and harbours of England are a part of the kingdom. The jurisdiction of the kingdom is as complete over them as over the land itself; and the laws of nations invest the commander of a foreign ship of war with no

* June 24th, 1794, Bradford. March 11, 1798, C. Qee.

exemption from the jurisdiction of the country into which he comes. It cannot be conceived that any sovereign power would permit its subjects to be imprisoned in its own territory by foreign authority or violence, without using the most effectual means in its power to procure their enlargement. Even the house of a foreign minister cannot be made an asylum for a guilty citizen, nor (it is apprehended) a prison for an innocent one; and, though it be exempt from the ordinary jurisdiction of the country, yet in such cases recourse must be had to the interposition of the extraordinary powers of the state. The commander of a foreign ship of war cannot claim that extra-territoriality which is annexed to a foreign minister and to his domicile, but is conceived to be fully within the reach of, and amenable to, the usual jurisdiction of the state where he happens to be. The Attorney-General therefore conceives that a writ of Habeas Corpus might be legally awarded in such a case.*

Again: "It may be assumed as a doctrine perfectly and incontrovertibly established, that the judicial power of a nation extends to every person and everything in its territory, excepting only to such foreigners as enjoy the right of extra-territoriality, and who, consequently, are not looked upon as temporary subjects of the State. The empire, united to the domain, establishes the jurisdiction of the nation in the territories or the country that belongs to it. It is that or its sovereign who is to exercise justice in all the places under his obedience, to take cognizance of the crimes committed and the differences that arise in the country."—*Vattel, c. 2, sec.* 84. "When a nation takes possession of certain parts of the sea, it enjoys the empire as well as the domain, for the same reason we have alleged in treating of land. These parts of the sea are within the jurisdiction or the territory of the nation; the sovereign commands them; he makes laws, and may punish those who violate them; in a word, he has the same rights there as on land, and, in general, all those given him by the law of the state."—*Vattel* 6, 1 *sec.* 295. Accord-

* Opinion of United States' Attorney-General, p. —.

ing to the general rule then established by these citations, every ship, even a public ship of war of a foreign nation, at anchor in the harbour of New York, is within the territory of the State of New York, and subject to the service of judicial process."*

This explanation of the law of nations shows that when a vessel is in a foreign port, under such circumstances as entitle it to exemption from the application of the local law, the exemption cannot be put on the same ground as the immunity from interference of a vessel on the high seas; for there in time of peace it is absolute. There is no right on the part of a foreign Court even to inquire into the legality of anything occurring in the vessel of another country while at sea; but within the territories of a country the local tribunals are paramount, and have the right to summon all within the limits of their jurisdiction, and to inquire into the legality of their acts, and determine upon them according to the law which may be applicable to the particular case. It appears to me, therefore, that it cannot with correctness be said, "that a vessel forced by stress of weather into a friendly port is under the exclusive jurisdiction of the State to which she belongs, in the same way as if she were at sea." She has been brought within another jurisdiction against her will, it is true, but equally against the will and without fault on the part of the foreign power; she brings with her (by the law of nations) immunity from the operation of the local laws for some purposes, but not for all, and the extent of that immunity is the proper subject of investigation and adjudication by the local tribunals.

Let us consider, then, the principles which ought to guide the local courts in this investigation.

It is true that by what is termed the "comity of nations" the laws of one country are, in some cases, allowed by another to have operation; but in those cases the foreign law has its authority in the other country from the sanction and to the extent only of the sanction, given to it there, and not from its original institution. On this subject Vattel observes:

* Opinion of United States' Attorney-General, p. —.

—"It belongs exclusively to each nation to form its own judgment of what its conscience prescribes to it—of what it can or cannot do—of what is proper or improper for it to do; and of course it rests solely with it to examine and determine whether it can perform any office for another nation without neglecting the duty which it owes to itself; and for any other State to interfere, to compel her to act in a different manner, would be an infringement of the liberty of nations."—*Story's Conflict of Laws, chap. 2, sec. 37,* citing *Vattel, Prelim. Diss. pp. 61, 62, sec. 14, 16; Story's Conflict of Laws, chap. 2, sec. 25,* and see also *sec. 24.*

From these principles it results that no nation can be called upon, or ought, to permit the operation of foreign laws within its territory when those laws are contrary to its interests or its moral sentiments.

Mr. Justice Story says:—"No nation can be justly required to yield up its own fundamental policy and institutions in favour of those of another nation, much less can any nation be required to sacrifice its own interests in favour of another, or to enforce doctrines which, in a moral or political view, are incompatible with its own safety or happiness, or conscientious regard to justice and duty." And again, after observing that "personal disqualifications, not arising from the law of nations, but from the principles of the customary or positive law of a foreign country, are not regarded in other countries," he emphatically says, "So the state of slavery will not be recognized in any country whose institutions and policy prohibit slavery." In the case also of Polydor *v.* Prince, Mr. Judge Ware held that a slave might maintain an action for a tort done him on the high seas, where all nations can and do claim an exclusive jurisdiction over their own vessels, in a vessel belonging to a slave State, on the arrival of that vessel, under any circumstances, within the jurisdiction of the non-slaveholding State, observing that "it was supposed at the argument that the capacity of the libellant to maintain this action in the courts of The United States may stand on grounds somewhat different from what it would in the States courts;—that slavery existing in some of the individual

States, and not being prohibited by the constitution and laws of The United States, the national courts might be bound by the principles of the *jus gentium* to recognize the incapacities of slaves having a foreign domicile, even where it would not be done by the slave courts, and that the national tribunals are under the same obligation in this respect, whether sitting in a State where slavery is admitted or where it is prohibited. If this were conceded,—and in the view which I take of the case I do not think it necessary to give an opinion on the question,—the answer is, that a court sitting in Louisiana is no more bound than one sitting in Maine to recognize, as to any acts or rights acquired within the exclusive jurisdiction of The United States, the artificial incapacities of persons resulting from a foreign law. The question in both cases would be, whether the party could, by the laws of The United States, have a standing in court. The court certainly is not bound to enforce against him a personal incapacity derived from the law of his domicile, *because that law can have no force* in this country any further than our law, on the principle of comity, chooses to adopt it; and every nation will judge for itself how far it is consistent with its own interest and policy to extend its comity in this respect. . . . If the incapacity alleged were slavery, it is not for me to say what would be the judgment of a court sitting within a jurisdiction where slavery is allowed; but sitting, as this court does, in a place where slavery by the local law is prohibited, I do not feel myself called upon to allow that disqualification when it is alleged by a wrongdoer, as attaching to the libellant by the laws of a foreign power, for the purpose of withdrawing himself from responsibility for his own wrong."—See also *Prigg* v. *the Commonwealth of Pennsylvania*, 16 *Peters* 539.

The language of Chancellor Kent* is equally emphatic on this subject; he says "There is no doubt of the truth of the general proposition, that the laws of a country have no binding force beyond its territorial limits; and their authority is admitted in other States, not *ex proprio vigore*, but *ex comitate;* or, in the language of Huberus, 'quatenus sine

* 2 *Kent Comm.* p. 457, 4th edit.

præjudicio *indulgentium* fieri *potest.*' Every independent State will judge of itself how far the *comitas inter communitates* is to be permitted to interfere with its domestic interests and policy." The general and most beneficial rule of international law contributing to the safety and convenience of mankind is—*Statuta suo clauduntur territorio, nec ultra territorium disponunt.*" Neither is comity to be exercised in doubtful cases; and whenever a doubt exists, the Court which decides will prefer the law of its own country to that of a stranger. *Saul* (*his Creditors*) 17; *Martin* 596. The question of what is or what is not within the comity of nations is for each particular nation to decide; and whether it will be bound by it, or waive in favour of another nation its private laws, is equally a matter for the consideration of each individual country. Now in the case of slavery, Great Britain has declared that under no circumstances will she tolerate, acknowledge, or admit slavery within her dominions. This, as Mr. Webster admits, is now "the well-known and clear promulgation of the will of the sovereign power, and the well-known rule of English law."

The question then resolves itself into this—In what cases and to what extent does the law of nations require that the local law shall admit the application of the rules of the foreign law instead of its own? It is conceded that the foreign law must be admitted to regulate the rights of property (properly so called) concerning chattels on board the vessel, and for some other purposes; but the question we have now to determine is, whether the law of nations requires that the local law, which ignores and forbids slavery, shall admit within its jurisdiction the foreign, which maintains slavery.

Now the two fallacies which appear to me to pervade the whole of the argument in support of the Claim, and deprive it of its whole force, are these:—first, that slaves are property in the ordinary sense of the word; and secondly, that international law requires that the right of the master to the person of his slave, derived from local law, shall be recognized everywhere.

It is true that by the municipal law of particular countries

slaves may be treated as, and may even be declared to be, property, and this has in past times been the case in some portions of the English dominions; but there is an essential difference between the rights of owners in their slave and ordinary property. This difference is clearly laid down by an eminent American judge in the case of the *Commonwealth* v. *Aves* 18; *Pickering's Reports*, 216. Chief Justice Shaw there says, "that it is not speaking with strict accuracy to say that a property can be acquired in human beings by local laws. Each State may, for its own convenience, declare that slaves shall be deemed property, and that the relations and laws of personal chattels shall be deemed to apply to them; but it would be a perversion of terms to say that such local laws do *in fact* make them personal property *generally*; they can only determine that the same rules of law shall apply to them as are applicable to property, and this effect will follow only as far as such laws *proprio vigore* can operate."

Mr. Webster however does not hesitate to place the relation of slavery on the same footing with that of marriage and parental authority; but the answer to this attempted comparison consists in this, that all nations and societies acknowledge marriage and parental authority. They are indeed the very foundation of society; they may vary in form, but the essence remains the same; they cannot so much be said to be in conformity with the law of nature as to be themselves natural laws. This is not the case with slavery, which is contrary to the law of nature, and, so far from being acknowledged by all nations, is now repudiated by almost all. Property in things however being recognized in all countries, it follows that in case of shipwreck "the local law would not operate to make the goods of one man to become the goods of another." But to make this *dictum* an authority for the principle contended for, it must first be established that there is no distinction between property in man and property in beasts or things.

In the case of *Jones* v. *Vauzandt*, 2 *M'Lean* 596, it was held that no action could be maintained at common law for

assisting a slave to escape, or harbouring him after his escape into a Free State, and that damages were only recoverable in such a case by virtue of the Constitution of The United States. In giving judgment in that case, Mr. Justice M'Lean observed, "The traffic in slaves does not come under the constitutional power of Congress to regulate commerce among the several States. *In this view the Constitution does not consider slaves as merchandize.* This was held in the case of *Grooves and Slaughter,* 18 *Peters.* The Constitution nowhere speaks of slaves as property . . . . . The Constitution treats of slaves as persons." "The view of Mr. Madison, who thought it wrong to admit in the Constitution the idea that there could be property in man, seems to have been carried out in this most important instrument. Whether slaves are referred to in it as the basis of representation as migrating, or being imported, or as fugitives from labour, they are spoken of as persons." "What have we to do with slavery in the abstract? It is admitted by almost all who have examined into the subject to be founded in wrong, in oppression, in power against right."

There is yet another case which affords a further striking illustration of the fact that American law recognizes an essential difference between property in slaves and property in things, so as to affect the rights of the owner independently of his will. The second section of the fourth Article of the Constitution protects every slave-owner from loss of his slaves by means of their flying into a Free State; it gives him a right to follow the slave, and seize him wherever he may find him. Yet in the case of *The Commonwealth* v. *Holloway,* 2 *Sergt. and Rawle* 304, it was held that where a female slave flying into Pennsylvania, and there giving birth to a child, though she herself might be reclaimed by her owner, her child could not but remain free by virtue of the law of the State, which declared that "no man or woman of any nation shall at any time hereafter be deemed, adjudged, or holden, within the territorities of this Commonwealth, as slaves or servants for life, but as free men and women." Now it is obvious that if the property in the female slave

were regarded in the same light as property in an animal, the ordinary rule of law, "*partus sequitur ventrem*," referred to by the learned Agent of the British Government, would have been applicable. In that case, as in the present, the slave-owner might have said, as he now says, "It was not by my consent that that which by the laws of my country I am entitled to claim as my property has been brought within the operation of your laws. My slave and her increase are mine; am I to be deprived of that increase because it has been by misadventure cast away upon your soil?" By the American law, as in the case before me, the English law answers, "It may be that in your own State you would have had the right you claim; but we do not acknowledge that you have a right of property in this human being as you could have in a horse or a dog; if you had, your consent alone would be considered in the matter; but as it is, here is an intelligent being who is entitled to be dealt with by our law which we sit here to administer, and not yours, as a man and by that law it is declared that no man shall be a slave." In the case also of *Prigg* v. *The Commonwealth of Pennsylvania*, 16 *Peters* 608, it was again held that the offspring of a fugitive slave could not be reclaimed by the owner. On the authority then of these cases, it may be considered as settled that by the law of The United States the presence or absence of consent or voluntariness on the part of the owner has nothing whatever to do with the question of whether his slave, when *within* the Territory of a State, no matter how brought, which does not acknowledge slavery, shall be free or not, The answer that must be given by the local tribunals, when called upon, must depend on the positive law of the place.* In The United States, the Constitution has provided an answer in the fourth Article; but when the circumstances are such that the letter of that enactment or some other is not applicable, the American law declares, like the English law, that it does not recognize property in man, but regards them all alike, whether black or white, as entitled to be free.

Mr. Justice Story thus distinctly explains the general

* See Judgment of Judge Ware, *ante*, p. 340.

principle of public law on this subject, and the modifications which have been introduced by The United States Constitution :—" By the general law of nations *no nation is bound to recognize the state of slavery, as to foreign slaves found within its territorial dominions,* when it is in opposition to its own policy and institutions, in favour of the subjects of other nations where slavery is recognized. If it does, it is a matter of comity, and *not* a matter of international right. The state of slavery is deemed to be a municipal regulation founded upon and limited to the range of the territorial laws. This was fully recognized in S. nersett's case. It is manifest then, from this consideration of the law, that if the Constitution had not contained this clause, every non-slaveholding State in the Union *would have been at liberty to have declared free all slaves coming within its limits, and to have given them entire immunity and protection against the claims of their masters.*" And again he says : " The duty to deliver up fugitive slaves, in whatever State of the Union they may be found, and of course the corresponding power in Congress to use the appropriate means to enforce the duty, *derive their sole* validity and obligation exclusively from the Constitution of The United States, and are there for the first time recognized and established in that peculiar character." See also *id.* ch. iv. sec. 96 (p. 165-6 of 3rd edit.).

That foreign nations then are not bound by any rule of international law to recognize slaves as property, and award to their owners the immunity which, by the comity of nations, is usually granted in respect of ordinary chattels, is clear from the course of legislation pursued by The United States ; for if they could be so bound, no law or action of The United States would have been necessary to compel one State denying the right and existence of property in a slave to deliver up a fugitive to another State admitting and maintaining the right,—and for this reason, that the law of nations, being as binding between State and State as between The United States and foreign countries, would have been sufficient for the purpose, and no special law would have been necessary. By what right then, or by force of

what argument, can The United States insist that Great Britain is to be bound by the law of nations to do that which, by its own legislation, it has proved beyond all question the separate States were not and could not be bound to do?

It is evident therefore, from the view of the American authorities alone, that the institution of slavery depends solely upon the laws of each individual State in which it is allowed, and that from its very nature it is only co-extensive with the territorial limits of such laws. An American writer thus describes it:—"It is an institution," says he, "in which the slave has no voice. It operates *in invitum*. The slave is no party, either practically or theoretically, to the law under which he lives in servitude. It is moreover an exceptional law; one which depends solely for its observance on the *continuance of the power* who made it. *The moment that power ceases, the objects of it are free to exercise their natural rights, which revive to them because they were held only in subjection or abeyance by superior force,* but which could not be disturbed, alienated, or forfeited except for some crime, springing as they do from the immutable and eternal principles of nature and justice."

It appears to me then to be clearly established by all the authorities on the subject, that nations or states are not bound to recognize the relation of master and slave which may be enacted by foreign law.

In the case of Forbes *v.* Cockrane (2 B. and C. 448) Mr. Justice Holroyd says: "A man cannot found his claim to slaves upon any general right, because by the English law such right cannot be considered as warranted by the general law of nations; and if he can claim at all, it must be by virtue of some right which he had acquired by the law of the country where he was domiciled; that when such rights are recognized by law, they must be considered as founded not upon the law of nature, but upon the particular law of that country, and must be co-extensive, and only and strictly co-extensive, with the territories of that State; but when the party gets out of the territory where it prevails, no matter under what circumstances, and under the *protection of another power,*

without any wrongful act done by the party giving the protection, the right of the master, which is founded on the municipal law of the place only, *does not continue*."

The fallacy contained in the argument in opposition to this view of the law consists in ignoring the slave *quâ* man, and in supposing him to be possessed of no rights as against the individual endeavouring to keep him in slavery, which a foreign nation is justified in taking into consideration.

As a man, the slave is as much entitled to appeal to the protection of our laws as his owner, and his claim must be adjudicated upon in conformity with the same principles. In the country whence he came, his voice could not be heard in the local Courts, to assert the rights which he derived from nature, as against the municipal laws of the place where he was domiciled. When he is driven, together with his so-called owner, to the shores of this country or its colonies, those rights of his master which are founded on natural law, such as property, marriage, etc., etc., are respected. Why then are we to be deaf to the appeal of the slave, when he also asks to have his rights, which are equally founded on natural law, respected? We have to choose between the natural law, supported by our own law, and foreign municipal law in direct opposition to both.

The choice is none of our seeking—it is cast upon us by chance. It would be to make international law a partial tyrant, rather than an equal arbitrator between nations,—to hold that one country can be bound under any circumstances, without fault of its own, to reject the law of nature and its own law, in favour of a foreign local law in opposition to both.

"The law of nations," says an American writer, with reference to this subject, "does not deal with the fictions and conventional rules which particular societies of men may have adopted as suitable to their own interest and government. It does not establish any geographical lines, and declare that any object on one side of that line is one thing, and that when it is moved to the other side it loses or changes its nature and becomes another thing. This law

of nature recognizes only manifest natural and universal truths, whether they are of a moral or a physical nature, and from these truths it deduces its rules. One of these moral truths is, that every man has a right to be protected in the enjoyment of his property, and therefore the duty of protecting property is enjoined on all nations.

"One of these physical truths is, that all inanimate objects and irrational animals are capable of becoming property whenever appropriated. The quality is inherent in, and inseparable from them. They have no personalty. They can have no rights while they exist; it is impossible that this character should be taken from them. A nation may declare that a particular article shall not be property, or may claim it to be contraband, or may prohibit its importation. But these laws, so far as they attempt to change the intrinsic nature of the object, are mere fictions, which are obligatory on the nation that enacts them.

"The law of nature and of nations is not affected by the local law with regard to these objects. Consequently, when the forbidden or contraband article is thrown by accident within the jurisdiction of the nation that has denounced it, the humanity and truth of the law of nature interpose with paramount authority to mitigate or suspend the harshness or fiction of the local law, and the property is protected for its owner, until, acting in good faith, he can remove it beyond the local jurisdiction.

"Let us now apply this law to the case of the slave. Man has a twofold nature. He has a material, tangible body; and, consequently, if any nation is so unjust as to declare any particular class of men within its territory to be property, this class, by means of the coercion which may be exercised over the bodies by individuals that impose it, is obliged to submit to what is a mere fiction of the local law, and, unless palliated by dire necessity, a most wicked and injurious one.

"This local rule, declaring a man to be property, is altogether untrue in fact and morals. Not all the legislation in the world can change the decrees of Providence, or reconcile

the material nature of property with the spiritual nature of man. The law of nature and of nations, dealing solely in actual truths, does not recognize this local fiction; and although it refrains from interference within the limits of the nation establishing it, yet it takes every opportunity beyond these limits of asserting or vindicating its own principles.

"It is one of these first principles, that man has an immortal soul, and it will not recognize or protect any human institution that is at war, as slavery is, with this catholic and immutable truth.

"When, therefore, a man, either by force or not (and it may be added, by accident) on the part of his owner, escapes beyond the limits of the local law that fastens slavery upon him, he falls under the benign protection of the law of nature, which steps in and sets bounds to the local fiction, and declares that it shall only be respected within the jurisdiction of the community that promulgated it. The law of nature did not make man a slave, and, therefore, that law will not keep him one."

Lord Palmerston in effect states the principle thus announced when, with the concurrence of those eminent men who now fill the highest judicial seats in the country, —viz., the present Lord Chancellor, the Lord Chief Justice of England, and the Judge of the Admiralty Court,—he declares that a distinction exists between laws bearing upon the personal liberty of man, and laws bearing upon the property which man may claim in irrational animals or in inanimate things.

"If a ship," says his Lordship in a despatch upon this subject, "containing such animals or things, were driven by stress of weather into a foreign port, the owner of the cargo would not be justly deprived of his property by the operation of any particular law which might be in existence in that port, because in such a case there would be but two parties interested in the transaction — the foreign owner and the local authority; and it would be highly unjust that the former should be stripped of what belongs to him through the forcible

application of the municipal law of a State to which he had not voluntarily submitted himself.

"But in a case in which a ship so driven into a foreign port by stress of weather contains men over whose personal liberty another man claims to have an acquired right, there are three parties to the transaction—the owner of the cargo, the local authority, and the alleged slave; and the third party is no less entitled than the first to appeal to the local authority for such protection as the law of the land may afford him. But if men who have been held in slavery are brought into a country where the condition of slavery is unknown and forbidden, they are necessarily, and by the very nature of things, placed at once in the situation of aliens who have at all times from their birth been free.

"Such persons can in no shape be restrained of their liberty by their former master any more than by any other person.

"If they were given up to such former master, they would be aggrieved, and would be entitled to sue for damages. But it would be absurd to say that when a State has prohibited slavery within its territory, this condition of things must arise, namely, that as often as a slave-ship shall take refuge in one of the ports of that State, liability must necessarily be incurred either to the former owner of the slaves, if the slaves be liberated, or to the slaves themselves, if they are delivered up to the former owner.

"If, indeed, a municipal law be made which violates the law of nations, a question of another kind may arise. But the municipal law which forbids slavery is no violation of the law of nations. It is, on the contrary, in strict harmony with the law of nature; and therefore, when slaves are liberated according to such municipal law, there is no wrong done, and there can be no compensation granted."

I have hitherto considered this case upon general principles, because, as other cases may occur, it is important to lay down general rules; but the special circumstances of the case would disentitle the claimants to compensation.

One ground, if indeed it be not the chief ground upon which this claim has been rested, is that the "Enterprize" was compelled by *necessity* to put into the port of Bermuda, and that on this account the owners of the slaves were entitled to claim exemption from the operation of English laws. I do not think, however, that any such case of necessity has been made out as would give rise to the exemption contended for, if under any circumstances it could arise. It is not pretended that the "Enterprize" was forced by storm into Bermuda. All that is asserted is, that her provisions had run short by reason of her having been driven out of her course. No case of pressing, overwhelming need is shown to have existed; but to avoid the inconvenience of short rations (and, considering the nature of the cargo, it was an inconvenience which a very slight delay was likely to occasion) the master put into an English harbour to procure supplies. These facts do not certainly disclose that paramount case of necessity which has been insisted on throughout the argument, and which alone (if *any circumstances* could give rise to the exemption upon which this claim is supported) could form the basis of such an appeal as the present. If a mere scarcity of provisions, which might arise from so many causes, is to be considered not only as a sufficient excuse for the entrance of a vessel into a British port with a prohibited cargo, but is also to entitle it to an exemption from the operation of English law, it is impossible to say to what the admission of such a principle might lead, or what frauds on the part of slave-speculators it might induce.

With respect to the cases of the "Comet" and "Encomium," it has been insisted that they are not distinguishable in principle from that of the "Enterprize;" and that, as the English Government granted compensation in these cases, we are bound by the precedent thus made. Those vessels, however, were driven into British ports, and the slaves on board were set free *before* the passing of the Act abolishing slavery. There was, therefore, no importation within the meaning of the Act 5 *Geo. IV. ch.* 113, which declared it

illegal to import slaves, and made it a felony to do so, and consequently there was no breach of the English law. Being then in an English port, the only question was whether there was any law which prevented their owners retaining possession of them. At that time there was not. Slavery was then in full force in the Bahamas, and of the same kind as that to which the American slaves were subject. The possession of the slaves was not therefore unlawful, nor was the relation between them and their masters liable to be dissolved by the mere accidental arrival of both in the colony. But at the time when the "Enterprize" was brought into the port of Hamilton, Great Britain had utterly and for ever abolished the *status* of slavery throughout the British colonies and plantations abroad (see Act of 3 & 4 *Wm. IV. ch.* 73, *sec.* 9). And by an Act of the Colonial Legislature, the apprenticeship system, created by the Act of William IV., was dispensed with. Slavery, therefore, in no form whatever, was known in the Bermudas at the time the "Enterprize" entered the port. It was impossible, therefore, that any judge called upon to administer the law within these islands could for any purpose, or under any circumstances, recognize the relation of master and slave as subsisting within the reach of his authority.

Under these circumstances, I am clearly of opinion that the claim of the owners of the slaves on board the "Enterprize" at the time she put into Port Hamilton, cannot be sustained, and that it ought, upon every principle of law, to be rejected.

"The Enterprize."

Mr. Upham, United States' Commissioner:

The "Enterprize" sailed from Alexandria, in the District of Columbia, on the 22nd of January, 1835, for Charleston, South Carolina. She had on board a cargo of merchandize and seventy-three slaves, with their owners. She was driven from her course, and, after being at sea three weeks, was compelled, through stress of weather and her leaky condition, to put into Port Hamilton, in the Island of Bermuda, until she could refit and proceed on her voyage. While there, the slaves on board were seized and liberated by the authorities of the island.

Claim for compensation was made on the British Government for the value of these slaves, and various communications have passed between the two Governments on the subject.

In March, 1840, resolutions were submitted to The United States' Senate relative to this claim, by Mr. Calhoun, which were adopted by that body, and which briefly set forth the principles on which the claim is based.

These principles are:—"That a vessel on the high seas, in time of peace, engaged in a lawful voyage, is, according to the law of nations, under the exclusive jurisdiction of the State to which she belongs; and that, if such vessel is forced, by stress of weather or other unavoidable circumstance, into the port of a friendly power, her country, in such case, loses none of the rights appertaining to her on the high seas, either over the vessel or the personal relations of those on board."

It was contended that the "Enterprize" came within these principles, and that the seizure and liberation of the negroes on board of her, by the authorities of Bermuda, was a violation of these principles and of the law of nations.

On the other hand, it was contended by the British Government that slavery had been abolished in the islands of Bermuda by the statute of 3 & 4 *Wm. IV., ch.* 73, passed August 28, 1833; and that the "Enterprize," being locally

within the jurisdiction of that colony, the slaves on board of her were rightfully liberated by virtue of such law.

This statement of facts raises the question as to the proper jurisdiction of the laws of either country over the "Enterprize," under the circumstances in which she was forced into the harbour of Bermuda. The same question had previously arisen in the cases of the "Comet" and "Encomium." These vessels had been thrown, by stress of weather, on the Bahama Islands, with slaves on board, which were liberated by the local authorities. A claim of compensation was made for these slaves, which was allowed and paid.

It is conceded in the correspondence with the British Government, that the only difference between the cases referred to and the present is, that the *Act* 3 & 4 *Wm. IV., ch.* 73, abolishing slavery throughout the British dominions, had not been passed at the time the slaves of the "Comet" and "Encomium" were liberated, but was in force when the claim under the "Enterprize" arose. Various other claims for compensation, under like circumstances with this case, have occurred; and they are constantly liable to occur, from the nearness of the British Islands, especially the Bahamas, to The United States, and from the vast number of vessels constantly passing from one section of the Union to another between these islands and the mainland, engaged in the American coasting trade.

Mr. Webster, in his letter to Lord Ashburton of August, 1842, urged the adjustment of this question by the British Government; and thus describes the Bahama Islands and the trade passing along their borders:—

"The Bahama Islands," he says, "approach the coast of Florida within a few leagues, and, with the coast, form a long and narrow channel, filled with innumerable small islands and banks of sand. On this account, and from the violence of the winds, and the variable nature of the currents, the navigation is difficult and dangerous. Accidents are therefore frequent, and necessity often compels vessels of The United States, in attempting to double Cape Florida, to seek shelter among these islands." "Along this passage," he says

(which is not less than 200 miles in length, and on an average not more than 50 miles wide), "the Atlantic States hold intercourse with the States situated on the Gulf of Mexico and the Mississippi river: and through this channel the product of regions, vast in extent and boundless in fertility, find their main outlets to the markets of the world."

During the few years since Mr. Webster's letter was written, the population of The United States has increased fifty per cent., with a corresponding increase in the business of the section of country to which he refers.

The question before us, then, is one of great practical importance, and should be permanently settled, so as to avoid all grounds of collision between the two Governments. Our province is to settle this case merely. It can be done, however, only by applying to it those broad and acknowledged principles of international law which furnish a general rule of conduct between nations.

I shall endeavour to ascertain what this law is. Before proceeding, however, to give my views fully on this subject, I shall advert briefly to the various points taken in the argument addressed to us by the learned Consul for the British Government.

These points are:—

1. "That laws have no force, in themselves, beyond the territory of the country by which they are made."

My reply is, that this is usually the case; but it is subject to the important addition that the laws of a country are uniformly in force, beyond the limits of its territory, over its vessels on the high seas, and continue in force in various respects within foreign ports, as we shall hereafter show.

2. It is contended "that, by the comity of nations, the laws of one country are, in some cases, allowed by another to have operation within its territory; but, when it is so permitted, the foreign law has its authority in the other country, from the sanction given to it there, and not from its original institution."

3. "That every nation is the sole judge of the extent and the occasions on which it will permit such operation, and is

not bound to give such permission where the foreign law is contrary to its interests or its moral sentiments."

As to these points, I concede that there are many laws of a foreign country, in reference to its own citizens or their obligations, that another nation may enforce or not, where the citizens of such a country voluntarily come within its borders, in order to place themselves under its jurisdiction. But there are cases where persons are forced by the disasters of the sea upon a foreign coast, where, as I contend, a nation has fundamental and essential rights, within the ordinary local limits of another country, of which it cannot be deprived, and that are operative and binding by a sanction that is wholly above and beyond the mere assent of any such State or community.

Such rights are defined by jurists as the absolute international rights of states. I might also add, it is not now a question whether the doctrines of international law shall prevail either in England or America.

"International law," says Blackstone, "has been adopted in its full extent by the common law of England; and whenever any question arises which is properly the subject of its jurisdiction, it is held to be part of the law of the land."—(*Black. Com. vol.* 4, *p.* 67.)

International law is also recognized by the constitution of The United States, and it is made the duty of Congress to punish offences against it.

4. It is contended "that England does not admit within its territory the application of any foreign laws establishing slavery, having abolished the *status* of slavery throughout its dominions."

This position is open to the exception taken to the second and third propositions, and is subject to the same reply.

5. It is contended "that the condition of apprenticeship, as permitted to remain in the West India Islands by the Act of 3 & 4 *Wm. IV., ch.* 73, is no exception to the abolition of slavery throughout the British dominions; because, it is said, the system is entirely different from slavery in point of fact; and because, however near a resemblance it may bear to it, it

could afford no justification for an English court to hold that another sort of slavery was valid."

Our reply to this is, that slavery does not necessarily depend on the length of time the bondage exists, but on its character.

The apprenticeship system continued, as to a portion of those to whom it was applicable, for twenty-one years; and few persons can calculate on a lease of life for a longer time.

Apprentices also were liable to be bought and sold, or attached for debt. The system, therefore, had all the worst characteristics of slavery.

Further, the act abolishing slavery acknowledged the legality and validity of slavery as an institution, as it rendered compensation for the liberation of slaves according to their respective valuations, and also gave to the owners of slaves the benefit of a term of intermediate service. If it was not considered right to liberate *British* slaves except on these conditions, how can it be right to compel the liberation of American slaves, casually thrown within the country, when no such compensation has been made, or term of service secured to their owners?

This forced liberation of the slaves of another Government, without compensation, is placed on the ground of the universal "abolition of slavery throughout the British dominions." Such abolition, however, was not effected by this Act, as the 64th Section provides, "that nothing in the Act contained doth or shall extend to any of the territories in the possession of the East India Company, or to the Island of Ceylon, or to the Island of St. Helena." It was merely enjoined on the East India Company, by Parliament at the same session, "that they should forthwith take into consideration the means of mitigating slavery in their possessions, and of extinguishing it as soon as it should be practicable and safe;" and slavery was not abolished in those provinces for some years subsequent to that period.

It is also said "that the provincial Government of Bermudas, after the passage of the general Act abolishing slavery, abolished the apprenticeship system prior to the liberation of

the slaves on board the "Enterprize;" but such abolition was not made till, under the general law, they had received compensation for their slaves.

6. "The principle on which the right of every man to personal liberty within British territory is attached is, that some law must be appealed to to justify the restraint of liberty; and that neither the apprentice law nor any other law can be appealed to to justify the restraint of these negroes."

To this we reply, that the law of the country from which the vessel comes, as sustained and enforced by the law of nations, can as well be appealed to on this subject as on any other. It is expressly admitted in the argument, that the law of nations may be appealed to, as exempting property, other than slaves, in cases of shipwreck and diasster, and exempting vessels of war from ordinary municipal jurisdiction; and this is done by giving to the law of nations, in such case, the force and effect of municipal law, which is all that is asked to be done in this case.

7. It is contended "that slavery is not a relation which the British Government, by the comity of nations, is bound to respect."

But such is not the doctrine of the British courts. They hold themselves bound, by the comity of nations, to respect both slavery and the slave trade; and they uphold and sustain it, in their decisions, where the rights of other nations are concerned.

In 3 *Barn. & Ald.* 353 *Maddrazzo* v. *Willes*, Chief Justice Abbott says, "it is impossible to say that the slave trade is contrary to the law of nations;" and Lord Stowell says, in *Le Louis*, 2 *Dodson's Admiralty Reports*, 210, "that the slave trade is not piracy or crime by the law of nations, and is, therefore, not a criminal traffic by such law; and every nation, independent of treaty relations, retains a legal right to carry it on."

Other grounds and arguments have been presented by counsel, but they are substantially included in those already named. These points have been accompanied by numerous

citations of authorities. These citations, however, consist of decisions applicable to English citizens, or to persons voluntarily subjecting themselves to English jurisdiction, and therefore are not applicable to the case under consideration. Indeed, the argument admits the distinction we take, and concedes that vessels, driven into harbour by distress or disaster, are exempted from the ordinary jurisdiction of municipal law. It denies, however, that slaves on board such vessels are included in such exemption, on account of the passage of the Act of 3 & 4 *Wm. IV, ch.* 73; and to this single point the argument seems to be practically reduced.

I shall now proceed, as I proposed, to state my views as to the principles of international law applicable to cases of this description. They are—

I. That each country is entitled to the free and absolute right to navigate the ocean, as the common highway of nations; and, while in the enjoyment of this right, retains over its vessels the exclusive jurisdiction of its own laws.

II. That a vessel, compelled by stress of weather, or other unavoidable necessity, has a right to seek shelter in any harbour, *as incident to her right to navigate the ocean,* until the danger is past and she can proceed again in safety.

III. That *the enjoyment of such shelter,* being *incident to the right to navigate the ocean,* carries with it *the rights of the ocean,* so far as to retain over the vessel, cargo, and persons on board, the jurisdiction of the laws of her country.

IV. That the Act of 3 & 4 *Wm. IV, ch.* 73, abolishing slavery in Great Britain and her dominions, could not overrule the rights of nations as laid down in these propositions.

It will be perceived that this chain of argument is based on fundamental rights of nations. Much has been said, in the argument of this case, as to rights of persons; but it is apparent that the preservation of these rights must depend mainly on the agency of nations. They constitute organizations, designed, in the economy of Providence, for the security of man in a state of society. The preservation,

therefore, of national rights, as the best constituted means for individual protection, cannot be too highly regarded. I shall briefly advert to some of these rights.

One of the absolute rights of nations is, that they shall all be regarded on terms of perfect equality with each other. This must be so, otherwise the rights of a nation, as such, would vary with its extent or power. But the rights of Spain are now the same as when she governed three-fourths of the American continent, and put forth her original boast, that her morning roll-call was caught up from one military station to another, and ran on, with the sun, around the globe.

Another of the absolute rights of nations is, that each nation must work out its own internal reforms, and establish its own system of internal policy, without the interference of any other power. Its government may, as its people elect, be based on hereditary right, or universal suffrage; its religion may be Christian, Mahomedan, or Pagan; the marriage relation may include two persons or more; there may be subordination of caste, or rank, or slavery; but, however these institutions or relations may be constituted, no one nation has a right to interfere with or control another in these respects, or in any other, so long as such States keep within the recognized principles of the law of nations.

Another of the essential rights of nations is, the free use of the common means granted by nature for commercial intercourse with its own citizens and other nations; or, in other words, the free right to navigate the ocean. No national right is more important than this.

This proposition, which I have laid down as the first ground on which this claim rests, is stated as follows:

I. That each country is entitled to the free and absolute right to navigate the ocean as the common highway of nations, and while in the enjoyment of this right retains over its vessels the exclusive jurisdiction of its own laws.

The Emperor Antoninus said, "though he was the lord of the world, the law only was the ruler of the sea."

Grotius says, "that the sea, whether taken as a whole or as to its principal parts, cannot become property. For the

magnitude of the sea is so great, it is sufficient for all people's use. There is a natural reason which prevents the sea from being made property, merely because occupation can only be applied to a thing which is bounded. Now, fluids are unbounded, and cannot be occupied, except as they are contained in something else, as lakes and ponds are occupied, and rivers as far as their banks; but the sea is not contained by the land, being equal to the land, or greater, so that the ancients say the land is bounded by the sea."—(*Grotius, Book* 2, *ch.* 2, *sec.* 3.)

Vattel says, "that the right of navigating the open sea is a right common to all men; and the nation that attempts to exclude another from that advantage does her an injury, and furnishes her with sufficient grounds for commencing hostilities." And "that nation which arrogates to itself an exclusive right to the sea does an injury to all nations; and they are justified in forming a general combination against it, in order to repress such an attempt."—*Vattel, Book* 1, *ch.* 23, *secs.* 282 & 283.)

Indeed, the free right of each nation to navigate the ocean is now nowhere contested; and it carries with it, as a necessary result, the exclusive jurisdiction on the high seas of the laws of each country over its own vessels.

Phillimore, in his recent work on *International Law*, vol. i. p. 352, says, that "all authorities combine with the reason of the thing, in declaring that, for all offences on the high seas, the territory of the country to which the vessel belongs is to be considered as the locality of the offence, and that the offender must be tried by the tribunals of his country;" and "it matters not," he says, "whether the injured person, or the offender, belong to a country other than that of the vessel." The rule is applicable to all on board. It is further well declared, that this right to navigate the ocean is a national one, and cannot be exercised by an individual except under the patronage and protection of his Government. Thus it is holden, "that every ship is bound to carry a flag, and to have on board ship's papers, indicating to what nation it belongs, whence it sailed, and whither it is bound,

under the penalty of being treated as a pirate."—(1 *Phill. Internat. Law*, 216.)

A vessel, wherever she is borne on the high seas, is bound, therefore, to have a national character, and is part and parcel of a recognized Government.

It is contended—

II. That a vessel compelled by stress of weather, or other unavoidable necessity, has a right to seek shelter in any harbour, *as incident to her right to navigate the ocean*, until the danger is past, and she can proceed again in safety.

This position I propose to sustain on three grounds:—By authority; by the concession of the British Government in similar cases; and by its evident necessity, as parcel of the free right to navigate the ocean, and therefore a necessary incident of such right.

1. The effect of stress of weather in exempting vessels from liabilities to local law, when they are driven by it within the ordinary jurisdiction of another country, is well settled by authority in various classes of cases, viz.: in reference to the blockade of harbours and coasts; of prohibited intercourse of vessels between certain ports that are subject to quarantine regulations; intercourse between certain countries, or sections of countries, which is interdicted from motives of mercantile policy; and in cases of liability to general customs duties.—(Authorities on these points will be found in *The Frederick Molke*, 1 *Rob. Rep.* 87; *The Columbia. do.* 156; *The Juffrow Maria Schroeder*, 3 *Rob*, 153; *The Hoffnung*, 6 *do.* 116; *The Mary*, 1 *Gall.* 206; *Prince* v. *U. S.*, 2 *Gall.* 204; *Peisch* v. *Ware*, 4 *Cranch*, 347; *Lord Raymond*, 388, 501; *Reeves's Law of Shipping*, 203; *The Francis and Eliza*, 8 *Wheaton*, 398; *Sea Laws, Arts.* 29, 30, & 31; and *The Gertrude*, 3 *Story's Rep.* 68.)

In the last named case, the learned Judge remarks, "that it can only be a people who have made but little progress in civilization, that would not permit foreign vessels to seek safety in their ports, when driven there by stress of weather, except under the charge of paying impost duties on their cargoes, or on penalty of confiscation, where the cargo con-

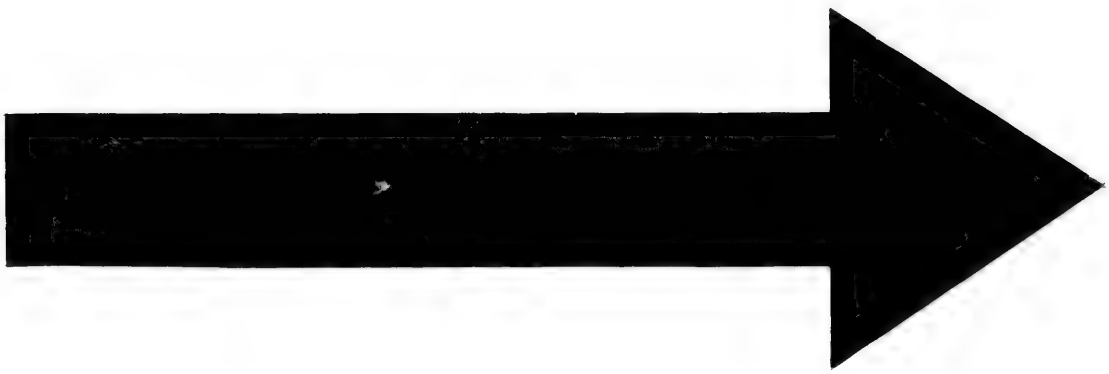
sisted of prohibited goods." (See also *Kent's Commentaries* 145, and authorities there cited.)

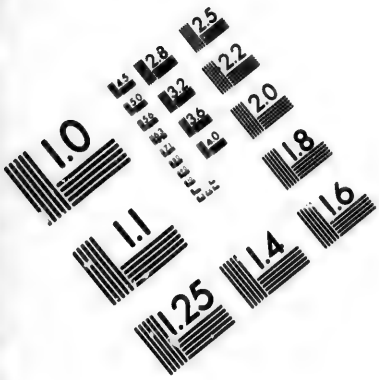
The authority of writers on international law is also directly in point. Vattel holds to the free right of all nations to the use of the ocean, with the exception that a portion of the ocean, immediately contiguous to the land, is subject to each Government for the purposes essential to its protection. Even here, however, he says:—"Other nations have a right of passage through such portions of the sea when not liable to suspicion, and in cases of necessity the entire right of the Government ceases; as, for instance, where a vessel is obliged to enter a road, in order to shelter herself from a tempest. In such case she may enter wherever she can, provided she cause no damage, or repair any damage done. This is a remnant of his primitive freedom, of which no man can be supposed to have divested himself; and the vessel may lawfully enter, in spite of such foreign Government, if she is unjustly refused admission."—(*Vattel, Book* 1, *ch.* 23, *sec.* 288,)

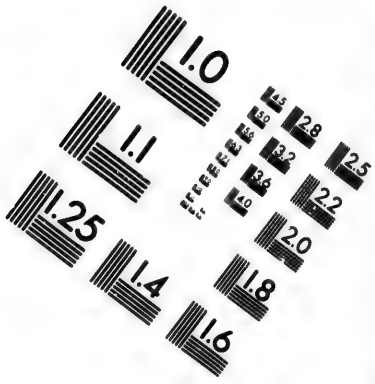
Again, he says, in another section, "a vessel driven by stress of weather, has a right to enter, even by force, into a foreign port."—(*Vattel, Book* 2, *ch.* 9, *sec.* 123; *Puffendorf, Book* 3, *ch.* 23, *sec.* 8.)

Vattel thus considers this an absolute right, that may be asserted at any hazard; and not a right resting in comity, or dependent on license, that may be modified or revoked. In the resort to force for the preservation of such rights, he is sustained by Phillimore and other modern writers on international law, who hold that the violation of rights, *stricti juris*, or the absolute rights of nations, "may be redressed by forcible means."—(*Phill. International Law, sec.* 143) Grotius, Puffendorf, and other writers lay down as a general principle the rule which is applicable to this case: "That, in extreme necessity, the primitive right of using things revives, as if they had remained in common; and that such necessity in all laws is excepted."—(*Grotius, Book* 2, *ch.* 2, *sec.* 6; *Puffendorf, Book* 2, *ch.* 6, *secs.* 5 *and* 6; *Vattel, Book* 2, *ch.* 9, *secs.* 119 *and* 120; *Bowyer's Commentaries on Public Law, p.* 357.)

2. The principles of law laid down by these various







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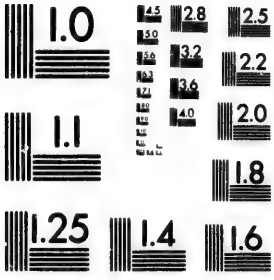

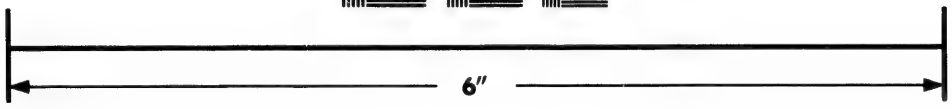

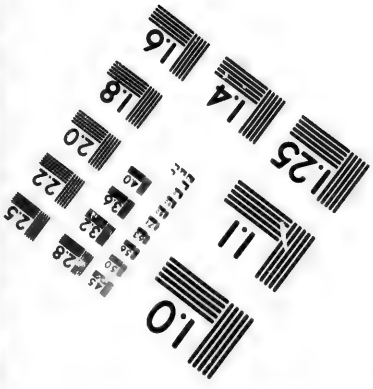

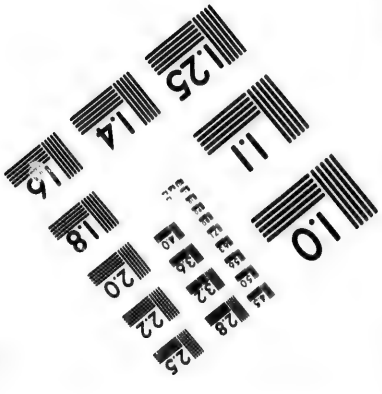

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writers are also sustained by admissions of the British Government, and by the allowance and adjustment of claims of precisely the same characteras the one before us.

In the correspondence between the two Governments in reference to this claim, it is admitted by Lord Palmerston, "that where a ship, containing irrational amimals or things, is driven by stress of weather into a foreign port, it would be highly unjust that the owner should be stripped of what belongs to him through the application of the municipal law of the State to which he had not voluntarily submitted himself."

This is an admission of the high injustice of seizing all property, except property in slaves; but the British Government have in other cases conceded the application of the same principle to slaves.

This was done in the case of the "Comet," to which I have before alluded, which was similar, in all essential particulars to this case. The "Comet" sailed from the District of Columbia in 1830, for New Orleans, having a number of slaves on board; she was stranded on one of the false keys of the Bahamas, and the crew and persons on board were taken by the wreckers into the port of Nassau, where the slaves were seized by the authorities of the Island and liberated.

The case of the "Encomium" is of the same description. She sailed from Charleston in 1834, for New Orleans, with slaves on board; was stranded in the same place, and the crew and persons on board were taken into the same port, where the slaves were seized and liberated by the authorities.

Claim was presented for redress for these injuries, and after full discussion of the subject, compensation was made by the British Government for the slaves thus liberated; and this compensation was rendered solely on the principle now contended for, that where a vessel is forced by stress of weather into a foreign port, she carries with her her rights, existing on the high seas, as to the vessel, property, and personal relations of those on board, as sustained by the laws of her own country.

That such was the ground on which these claims were

allowed and paid is manifest, because they were slaves of a foreign country, brought within the limits of the British Government; but not held there in bondage by any British law.

So far was this from being the case, that the statute of 5 *Geo. IV. ch.* 113, then in force, expressly prohibited bringing slaves from other countries into places within British jurisdiction, or retaining them there, under heavy penalties; and all persons offending against this law were declared to be felons, and were liable to be transported beyond the sea, or to be confined and kept at hard labour for a term of not less than three, nor more than five years.

There was, then, no British law in existence by which these slaves could be holden; and the claim to compensation rested solely on the laws of The United States, which were holden to be rightfully operative, and in force against the persons claimed as slaves, under the circumstances in which the vessel was driven into port.

This result it is impossible to avoid, and the principle asserted is fully sustained by these cases. I am aware that the claim of the "Enterprize," which was pending at the same time, was disallowed, on the ground of a subsequent change in the local law in reference to slavery. The slaves of the "Comet" and "Encomium," however, were not holden by any of the local laws of the island, but were there in violation of them. The repeal of such local law, therefore, can in no manner affect the principle of the decision.

3. A further reason assigned for the point now under consideration is its evident necessity as a part of the free right of each nation to navigate the ocean, and as a necessary incident of such right.

Writers on public law, we have seen, assert a right to enter a foreign port, when driven there by stress of weather, on the ground of necessity. This necessity arises from perils on the deep, to which all navigation on the ocean is subject; and if such perils from this cause give the right of refuge, it becomes necessarily what I claim for it—an incidental right to the navigation of the ocean.

It is a necessity essential to the enjoyment of a clear and

undeniable right; and whatever is essential to the enjoyment of a right, or is a necessary means of its use, is *ex vi termini*, a necessary incident of such right.

This connection I have not seen adverted to; and it is not laid down by the writers cited, as it was not essential to their purpose to follow out the origin, or causes from which the necessity arose. It is clearly embraced, however, in their propositions, and is important in this case, as it determines the true character of the rights arising from this necessity in a manner that admits of no question or controversy.

The claim is thus an incident to an absolute and essential right of nations, and is not a claim to the mere favour of any people, which they may give or deny at pleasure, out of any supposed exclusive jurisdiction of their own.

All incidental rights are based on necessities arising from the prior and original right. A right to the end uniformly carries with it a right to the means requisite to attain that end, or, as is stated by Mr. Wheaton, "draws after it the incidental right of using all the means which are necessary to the secure enjoyment of the thing itself."—(*Wheat., Part 2, ch. 4, secs.* 13 & 18).

Further, incidental rights, of a similar character and attended with precisely the same result, as to entry within the territorial jurisdiction of another Government have been asserted in connection with the right to navigate the ocean, and are holden as undoubted law. Thus the right to navigate the ocean is holden to give the right *as incidental to it*, to persons inhabiting the upper sections of navigable rivers to pass by such rivers through the territory of other Governments in order to reach the ocean, and thus participate in the commerce of the world.

Great Britain claimed and exercised this right with all its incidents against Spain in the navigation of the Mississippi; and when a Spanish governor undertook at one time to forbid it, and cut loose vessels fastened to the shores, it is asserted by Mr. Wheaton that a British vessel moored itself opposite New Orleans, and set out guards, with orders to fire on persons who disturbed her moorings. The governor acquiesced

in the right claimed, and it was afterwards exercised without interruption.—(*Wheaton, Part* 2, *ch.* 4, *sec* 18; *Grotius, Book* 2, *ch.* 2, *secs.* 12 & 13; *ch.* 3, *secs.* 7-12; *Vattel, Book* 2, *ch.* 9, *secs.* 126-130; *ch.* 10, *secs.* 132-134; *Puffendorf, Book* 3, *c.* 3, *secs.* 3-6.)

The right to the use of navigable rivers, further, is holden to draw after it, as a means necessary to its enjoyment, the right to moor vessels to the banks of such rivers within another country, and the very right we here contend for—"to land in case of distress," and where a vessel is damaged to deposit her cargo on the shore until the vessel can be repaired, and it can proceed in safety.—(*Wheaton's Internat, Law, Part* 2, *ch.* 4, *secs.* 13-18; *Grotius, Book* 2, *ch.* 2, *secs.* 11-15; *Puffendorf, Book* 3, *ch.* 3, *secs.* 3-8; *Vattel, Book* 1, *ch.* 9, *sec.* 104; *Book* 2, *ch.* 9, *secs.* 123-139.)

It is holden also in civil law that the use of the shores of navigable rivers and of the ocean is incident to the use of the water.—(*Inst., Book* 2, *title* 1, *secs* 1-5.)

For the convenient use of navigable rivers by nations bordering upon them, treaties have been usually made, specifying rules and regulations in reference to their use; but it is well settled that such treaties recognize and sustain the right of use, and do not originate it.

It may be said that the right of shelter from the land, which is claimed as an incident to the use of the ocean, cannot be set up at the same time with the right over the ocean, which is admitted to a certain extent as incident to the land. But these rights do not conflict with each other. The right of a State bordering on the ocean to a given extent over the waters immediately adjoining attaches for certain fiscal purposes, and purposes of protection. But the jurisdiction thus obtained is by no means exclusive. Sovereignty does not necessarily imply all power, or that there cannot co-exist with it, within its own dominions, other independent and co-equal rights.

Indeed, the exception taken furnishes a strong argument in favour of the principle we contend for, because the same rule of justice that gives for certain purposes jurisdiction over the waters, as incident to the use of the land, extends,

for like reasons, a right over the land for temporary use and shelter, as incident to the use of the ocean. The rule operates with equal validity and justice both ways, and its application in the one case sustains and justifies it in the other. If either right must give way, there seems to be no good reason why the older and better right of the nations to the free navigation of the ocean, with its incidents, should be surrendered to the exclusive claims of any single nation on its borders. But this is not necessary, as both rights in their full perfection may exist together.

I now come to the third proposition.

III. That as the right of shelter by a vessel from storm and inevitable accident is incident to her right to navigate the ocean, it necessarily carries with it her rights on the ocean, so far as to retain over the vessel, cargo, and persons on board the jurisdiction of the laws of her country.

This is clearly the necessary result of the prior position. It is laid down, as an elementary proposition, by Vattel, "that where an obligation gives a right to things without which it cannot be fulfilled, each absolute, necessary, and indispensable obligation produces, in this manner, rights equally absolute, necessary, and indefeasible." — (*Vattel, Book* 2, *ch.* 9, *sec.* 116.)

Wherever the use of a minor sheet of water may be claimed, as incident to that of a larger, it is, while in use, a substitute for it, and draws after it, as of course, all the rights and privileges connected with the enjoyment of the principal right itself.

The entrance of a vessel into a foreign harbour, when compelled by stress of weather, is a matter of right. She goes there on a highway, which, for the time being, is her own. She is, as when on the ocean, part and parcel of the Government of her own country, temporarily forced, by causes beyond her control, within a foreign jurisdiction. Her presence there, under such circumstances, need not excite any more feeling than when on the ocean. It is a part of her voyage, temporarily interrupted by the vicissitudes of the sea, but carrying with it the protection of the sea;

and the property and relations of the persons on board cannot, in such case, be interfered with by the local law, so as to obstruct her voyage or change such relations, so long as they do not conflict with the law of nations.

These positions do not seem to be contested, as a general rule; but it is said that since the abrogation of slavery by England, the principles thus laid down will not apply to slave property, and this brings me to the fourth point to be considered.

IV. That the Act of 3 & 4 *Wm. IV, ch.* 73, abolishing slavery in Great Britain and her dependencies, could not have the effect to overrule the rights laid down in the foregoing propositions.

It has been contended that the law abolishing slavery overruled the law of nations, on the ground that slavery is contrary to natural right, and is, in fact, beyond the protection of all law. Authorities have been cited as tending to sustain this doctrine, going back to the earliest adjudged case in France, where the question was elaborately examined, and it was held that the institution of slavery, in the absence of specific law, could not be sustained under any subsisting usage or custom of that country, as it was contrary to the laws of nature and humanity, and slaves could not breathe in France.

Long after this, the Somerset case, sustaining the same principle, came up in England, and from that time this has been considered the leading case on the subject; and the declaration founded upon it, "that slaves cannot breathe in England," has been usually regarded as a sentiment peculiarly applicable to British soil and institutions.

The doctrine of the Somerset case, and the expressions of numerous distinguished English and American jurists sustaining it, including Chief Justice Marshall, Mr. Justice Story, and Chief Justice Shaw, have been fully cited in this case, "that slavery is against the law of nature;" "has no foundation in natural or moral right;" "is odious," &c.

These doctrines are not novel on the American side of the Atlantic. They were the established sentiments there a

century before the revolution, and were reiterated again and again, from that period down to the time of the separation from England, in constant acts of the colonial legislatures, and in constant protests against the importation of slaves into the colonies. But the royal colonial governors were instructed to veto all such acts, and the institution of slavery was perseveringly forced upon America.

I see no occasion to dissent from the full effect of the adjudications cited, or the sentiments expressed; but they do not settle any question of international right arising in this case, or define any line of limitation betwixt conflicting jurisdictions, or sustain at all the point to which they are cited, that slavery cannot subsist by valid law.

What is law is a question of fact; and though its original institution may have been of doubtful morality or justice, it is still law. It is a dangerous doctrine that all law, not originally conceived and promulgated in *abstract right*, is invalid, or is to be instantly overthrown.

This is readily shown by extending the inquiry to other subjects. By what *abstract* or *natural* right, I might ask, is one man born to rule over another, or one set or class of men by birth to become legislators for others? There is no such natural inequality; there is no principle of abstract right to sustain such an order of things. But we must deal with institutions as they are, and relations as they subsist. Reforms must advance gradually. The time will doubtless come when all things not founded in right will cease; when there will be no privileged classes by birth; no compulsory support of one religious sect by another, to which it is conscientiously opposed; no sales of religious presentations; no slavery.

But these Gordian knots, that have been compacted for centuries, and are intertwined and bound up in all the relations of men, are not to be severed at a blow. Each nation must deal with them, in its own time and manner. Such measures of reform cannot be promoted by the illegal interference of one nation with another, or by forcing upon shipwrecked individuals, temporarily thrown within the limits of another land, laws in conflict with their own rights of

self-government, and the established relations of their country.

These views are sustained by the concurrence of some of the ablest English jurists, and the settled adjudications of English law. Thus it has been holden, though the slave trade is declared to be contrary to the principles of justice and humanity, no state has a right to control the action of any other government on the subject (*The Amedie*, 1 *Dod.* 84 *n*; *The Fortuna*, 1 *Dod.* 81; *The Diana*, 1 *Dod.* 101); and that no nation can add to the law of nations by its own arbitrary ordinances (*Pollard* v *Bell*, 8 *Term rep.* 434; 2 *Park on Insurance*, 731); or privilege itself to commit a crime against the law of nations by municipal regulations of its own (*Le Louis*, 2 *Dod.* 251).

It is also holden that a foreigner, in a British court of justice, may recover damages in respect of a wrongful seizure of slaves.—(*Maddrazzo* v. *Willes*, 3 *Barn. & Ald.* 353; *The Diana*, 1 *Dod.* 95.) And in the case of *Le Louis*, 2 *Dod.* 238, above cited, Sir William Scott (Lord Stowell) says, though the slave trade is unjust and condemned by the laws of England, it is not therefore a criminal traffic by the laws of nations; and every nation, independent of its relinquishment by treaty, has a legal right to carry it on. "No one nation," he says, "has a right to force the way to the liberation of Africa by trampling on the independence of other states; or to procure an eminent good by means that are unlawful; or to press forward to a great principle by breaking through other great principles that stand in the way."

And when pressed in the same case with the inquiry, "What would be done if a French ship laden with slaves should be brought into England?" he says. "I answer without hesitation, restore the possession which has been unlawfully divested; rescind the illegal act done by your own subjects, and leave the foreigner to the justice of his own country."

The doctrine that slavery cannot be sustained by valid law must be set at rest by these authorities.

There is but one other ground on which it can be con-

tended that the act of 3 & 4 *Will. IV. ch.* 73, overrules the principles I have laid down, and that is, that the municipal law of England is paramount to the absolute rights of other governments when they come in conflict with each other. Such a position virtually abolishes the entire code of international law. If one State can at pleasure revoke such a law, any other State may do the same thing, and the whole system of international intercourse becomes a mere matter of arbitrary will, and of universal violence.

It appears to me from a full examination of the law applicable to the case, that the "Enteprize" was entitled, under the immediate perils of her condition, to refuge in the Bermudas; that she had a right to remain there a sufficient time to accomplish the purposes of her entry, and to depart as she came; that the local authorities could not legally enter on board of her for the purpose of interfering with the condition of persons or things as established by the laws of her country; and that such an exercise of authority over the commerce and institutions of a friendly State is not warranted by the laws of nations.

For these reasons I am of opinion that the claim before the Commission is sustained, and that the owners of slaves on board the "Enterprize" are entitled to compensation for the illegal interference with them by the authorities of Bermuda.

The "Enterprize."

London, 23rd December, 1854.

The umpire reports that this claim is presented on behalf of the Charleston Marine Insurance Company of South Carolina, and of the Augusta Insurance Company in Georgia, for the recovery of the value of 72 slaves, forcibly taken from the brig "Enterprize," Elliot Smith, Master, on the 20th February, 1835, in the harbour of Hamilton, Bermuda. The following are the facts and circumstances of the case:—The American brig, "Enterprize," Smith, Master, sailed from Alexandria, in the District of Colombia, United States, on the 22nd January, 1835, bound for Charleston, South Carolina. After encountering head winds and gales, and finding their provisions and water running short, it was deemed best by the master to put into Hamilton, in the Island of Bermuda for supplies. She arrived there on the 11th February, having taken in the supplies required, and having completed the repair of the sails, she was ready for sea on the 19th, with the pilot on board. During the repairs no one from the shore was allowed to communicate with the slaves. The vessel was kept at anchor in the harbour, not brought to the wharf. Being thus ready for sea, Captain Smith proceeded with his agent to the Custom-house to clear his vessel outward, the Collector stated that he had received a verbal order from the Council to detain the brig's papers until the Governor's pleasure could be known. The Comptroller and a Mr. Tucker then went to the other public offices, and on their return to the Custom-house the Comptroller, after consulting a few minutes with the Collector, declared that he would not give up the papers that evening, but would report the vessel out the next morning as early as the Captain might choose to call for the papers. In consequence of this decision the Captain immediately noted his protest in the Secretary's Office against the Collector and

Comptroller, for the detention of his ship's papers, and informed the officer of the Customs he should hold them responsible; that he (the Captain) feared the coloured people of Hamilton would come on board his vessel at night and rescue the slaves, as they had threatened to do. The Collector then replied there was no danger to be apprehended; that the coloured people would not do anything without the advice of the whites, and they knew the laws too well to disturb Captain Smith. At 20 minutes to 6 o'clock P.M., the Chief Justice sent a writ of *habeas corpus* on board, and afterwards a file of black soldiers, armed, ordering the Captain to bring all the slaves before him, the Chief Justice, which Captain Smith was obliged to do. On the slaves being informed by the Chief Justice that they were free persons 72 declared they would remain on shore, which they did, and only six of them returned on board to proceed on the voyage.

This is believed to be a faithful sketch of the case from which it appears that the American brig "Enterprize" was bound on a voyage from one port in The United States to another, lawful according to the laws of her country and the laws of nations. She entered the port of Hamilton in distress for provisions and water. No offence was committed against the municipal laws of Great Britain or her Colonies. There was no attempt to land or to establish slavery in Bermuda in violence of the laws. It was well-known that slavery had been conditionally abolished in nearly all the British dominions about six months before, and that the owners of slaves had received compensation, and that six years apprenticeship was to precede the complete emancipation, during which time apprentices were to be bought and sold as property, and were to be liable to attachment for debt. No one can deny that slavery is contrary to the principles of justice and humanity, and can only be established in any country by law. At the time of the transaction on which this claim is founded, slavery existed by law in several countries, and was not wholly abolished in the British dominions. It could not, therefore, be contrary to the law of

nations, and the "Enterprize" was as much entitled to protection as she would have been had her cargo been sugar or any other goods. The conduct of the authorities at Bermuda was a violation of the law of nations, and of those laws of hospitality which should prompt every nation to afford protection and succour to the vessels of a friendly neighbour that may enter their ports in distress.

The owners of the slaves on board the "Enterprize" are, therefore, entitled to compensation, and I award to the Augusta Insurance and Banking Company, or their legal representatives, the sum of sixteen thousand dollars; and to the Charleston Marine Insurance Company, or their legal representatives, the sum of thirty-three thousand dollars, on the fifteenth January, 1855.

JOSHUA BATES, *Umpire.*

The Cases of the "Creole" and "Hermosa."

The facts in connection with this claim are as follows:—

The American brig "Creole" sailed from Hampton Roads, Virginia, on the 27th of October, 1841, having on board a cargo of 135 slaves bound for New Orleans.

On the 7th of November the slaves rose against the ship's officers and crew, and, after killing a passenger and seriously wounding the captain and several of the crew, obtained possession of the vessel, and obliged the mate, under threats of instant death, to navigate the vessel to Nassau, in New Providence, a possession of the British Government. On its arrival at that place, the mate found means to communicate the facts under which he had been obliged to enter the port to the Consul of The United States, who instantly applied to the Governor of the Island for his assistance in preventing any further excesses on the part of the slaves; in compliance with which request the Governor sent a guard on board.

Subsequently, an investigation into the circumstances under which the slaves came into possession of the vessel was made, and eventually the authorities, acting under the advice of the Law Officers of the Crown in the Island, declined using any coercive measures with the view of obliging the slaves to continue on board the vessel during the remainder of the voyage, and prevented a plan, organized by the American Consul for forcibly obtaining possession of the vessel and slaves, from being carried into execution. The slaves were then informed that they were at liberty either to go on shore, or continue the voyage, as they were best pleased, and the majority deciding to leave the vessel, did so.

The claim for the full value of the slaves thus leaving

the ship is founded upon the alleged fact of the slaves being forcibly taken from the custody and possession of the master of the vessel, and liberated by order of the English Colonial authorities.

MR. HORNBY, British Commissioner:

I HAD hoped that it would have been unnecessary for me to have stated at any length the reasons which induce me to consider that the British Government cannot be held responsible to the owners of the slaves on board these two vessels in respect of the loss sustained by them under the circumstances, which enabled their slaves to regain their liberty.

These circumstances I have briefly narrated, and in so far as the reasons given in my judgment in the case of the "Enterprize," are applicable to the solution of the general proposition respecting the obligation of one country not acknowledging slavery under the circumstances detailed in that case, to respect the local laws of another country, in which slavery might exist as an institution. I beg they may be considered as forming part of my present judgment.

In the cases of the "Creole" and "Hermosa," however, there are points arising out of the peculiar circumstances under which these vessels respectively came within British jurisdiction, that distinguish them materially from the case of the "Enterprize." The gravamen of the offence charged against the British authorities in all these three cases consists in the allegation "that after the ships came within their jurisdiction, they *interfered* to rescue the negroes from the hands of those who had them in custody." In the case, however, of the "Creole," this is clearly the reverse of the fact, inasmuch as it appears from the claimant's own statement, that the slaves had, on their arrival at Nassau, the sole and exclusive possession and custody of the crew as well as of the vessel, the former being their prisoners; while in that of the "Her-

mosa," the slaves may be said to have regained their natural rights by the mere action of the elements. The argument, therefore, such as it is, which is founded upon the continuance of the custody by the owners and the consequent interference by the authorities, must fall to the ground. In both these cases, the relation of master and slave never in fact existed within British jurisdiction, it having been forcibly dissolved on board the "Creole" by the slaves themselves, and in that of the "Hermosa," by the destruction of that vessel on the coast of a British Island.

The first point, then, that I propose to consider in the case of the "Creole" has reference to the right of a slave to regain his liberty, involving, of course, the question of whether if he commit murder in the attempt, he has offended against the general law of nature and of nations; and the second, whether, considering them as criminals, Great Britain is bound to deliver them up on the demand of the country against whose local laws they may have chanced to have offended. With respect to the first point, so far as English law is concerned, it has been decided by the Law Lords of this country in Parliament assembled, when this very case was submitted to them for their opinion (*see Hansard's Debates, vol. 40, p.* 317) that there was no English law which rendered slaves punishable for any act done by them when endeavouring to secure their liberty. No English court of law, therefore, could legally punish them for the act of homicide, and it is not to be questioned but that in the absence of Treaty stipulations, Great Britain has the right to try men charged with a specific offence in her own courts, and by the light of her own laws. It cannot be seriously argued that slaves in rising to effect their liberation, even by violence and bloodshed, are committing an offence against this law of nations. It is true that, according to the municipal law of America, such attempts are punishable; but the statute which gives the local authority the power to punish, is on the same footing with that which virtually declares the right of men to hold others in bondage, and both are equally indefensible, being "founded in wrong, in oppression, in power

against right."* The only offence, then, against the law of nations, as well as against the laws of The United States, that the Government of the latter could even colourably charge against the slaves in the "Creole," was that of piracy, and Great Britain has exercised the power which, in common with every other sovereign nation she undeniably possesses of inquiring into the facts, and has declared the individuals so charged, to be innocent of that offence.

I come now to the second point. Can The United States rightfully call upon Great Britain to surrender the criminals, even upon the assumption that they are criminals. To ascertain this, we must first decide whether, according to international law, the obligation to surrender criminals is common to all nations, and, in the absence of any explicit authority on the subject, we may take, as against The United States at least, the rule which she has adopted on the subject. The writings of Jefferson (Vol. III. *p.* 131, 1, *American State Papers,* 145), so far as regards the action of the Executive, are conclusive on this head; and this action has been more recently referred to by Chief Justice Taney, in the case of Holmes *v.* Jennison (14, *Peters' Supreme Court Rep rts,* 574). "Since the expiration of the Treaty," says that learned Judge, "with Great Britain, negotiated in 1793, the general Government appears to have adopted the policy of refusing to surrender persons who have committed offences in a foreign nation, and have taken shelter in this. It is believed that the general Government has entered into no Treaty stipulations since the one above mentioned,† and in

* For authorities that slavery is against the law of nations, see those cited by me in my opinion in the case of the "Enterprize;" also,

Puffendorf, Bk. 3, ch. 2, sec. 5.
Lunsford *v.* Cognillan, 2 N.S. 401.
"The Antelope," 10 Wharton, 120.
Rankin *v.* Lydia, 3 Marshall, 470.
Maria Louisa *v.* Marot et al, 9 L. Rep. 475.
Grace 2, Haggard's Adm. R. 94.

† Since the date of this judgment, and the entry of the "Creole" into Nassau, the extradition of criminals has been regulated by a Treaty between the two Governments.

every instance where there was no engagement by Treaty to deliver, and a demand has been made, that they have uniformly refused, and have denied the right of the Executive to surrender, because there was no Treaty and no law of Congress to authorize it. And, acting upon this principle throughout, they have never demanded from a foreign Government any one who has fled from this country, in order to escape from the punishment due to his crimes." This principle is also fully admitted by Mr. Webster, in his letter to Lord Ashburton, on the 1st of August, 1842. "If," says he, "persons guilty of crimes in The United States, seek an asylum in the British dominions, they will not be demanded until provision for such cases be made by Treaty, because the giving up of criminal-fugitives from justice is agreed and understood to be a matter in which every nation regulates its conduct according to its own discretion. It is no breach of comity to refuse such surrender." In demanding, however, the slaves in this case, the Executive of The United States have departed from the line of conduct which they have hitherto pursued; for I do not suppose that even my Colleague, or the learned Agent of The United States will contend that in compelling the remainder of the crew and owners to accompany them to Nassau, after having violently effected their freedom, the slaves were the less escaping from the punishment which the laws of The United States would have visited upon them. The slaves then not having done anything for which the law or comity of nations has prescribed a punishment, but having on the contrary, in the pursuit of a fair and legitimate object, committed an act which, however unjustifiable under other circumstances, is capable of a justification under those which gave rise to it in the case of the "Creole," there exists no obligation on the part of Great Britain to surrender them; and even supposing that by virtue of Treaty stipulations, fugitive-criminals were to be given up to either country on the demand of the other, there would still arise the question whether, even then, some evidence must not be given that the alleged criminal was guilty of an act which would justify his commitment, had he committed

it within the jurisdiction of the country to which he had fled. Now, in the present instance, the crime of piracy—*animus furandi*—would not have been substantiated against the Negroes, because, according to the laws of the country into whose jurisdiction they had come, their efforts to regain their liberty were justifiable; nor could the charge of murder have been made with any more successful result, for the reason, that, according to the law of The United States, as well as the law of Great Britain, persons held in involuntary bondage, except for crime, are to be considered as suffering illegal imprisonment, and have not only the right to escape by all the means in their power, but should they kill any one attempting to restrain or capture them, it would be held to be an act of justifiable homicide; * and slavery, according to the laws of England, is such involuntary bondage, as would justify escape and even murder.

If then the slaves are to be considered in the light of criminals, Mr. Webster himself has shown that a refusal to surrender them is no breach of comity. And in the same letter in which he thus expresses himself, there is also this paragraph which appears to me to be conclusive on the subject which has now been brought under our consideration. "If slaves" says Mr. Webster, "the property of citizens of The United States, escape into British territories, it is not expected they will be restored. In that case, the territorial jurisdiction of England will have become exclusive over them, and *must* decide their condition." In the case of the "Creole" it is in evidence that the slaves did actually escape into British territory. The ship was in their possession, they were complete masters of their own movements, under no physical control, having by force of their own strength overpowered their owners and the ship's crew. It is true that in obtaining their freedom from restraint, they had committed acts, which under other circumstances would have been crimes; but these *acts* cannot alter the fact that they had escaped, and as was argued on behalf of the owners of these very slaves when they sought to establish as against the

* U. S. *v.* Naah. Bee's Reports.

Insurance office the amount named in the policy. "The freedom of the Blacks who reached Nassau in the 'Creole,' was acquired not by *reason*, but in spite of the commission of their crimes. The freedom was acquired by their escape from slavery into a free country. The *means* of escape cannot affect the consequences resulting from it. If a slave eludes the vigilance of his owner and escapes into a free country, he becomes free. If, while effecting his escape, he is discovered and impeded in his flight and overcome the impediment by violence, the *result* is the same. In neither case can he be reclaimed." The successful escape then of these slaves into British jurisdiction made them, according to every construction of the law of nations free, and Great Britain could neither refuse a refuge to them in her dominions, nor return them to a condition of servitude.

The only argument then to which I have now to advert, is that which was advanced in the case of the "Enterprize." I have shown however, that so far it is founded upon a continuance of the custody of the slaves of the owners, it is inapplicable in either of these cases, as the slaves had emancipated themselves from it, nor indeed can those principles of international hospitality which have been appealed to as obligatory on the Government of Great Britain, so far as the ship and owners of the slaves are concerned, be relied on; for it would be obviously the very height of injustice to limit the application of their hospitality to one class of persons when all are equally entitled to it. The colour of the individuals can make no difference, as the presumption of the municipal law of The United States, that black men are slaves, is not certainly to be held as a rule by the law of nations. So far as the authorities of Nassau are concerned, they did that only which it was their duty to do. "The Sovereign" says Vattel, (*Vattel, Bk.* 2, *ch.* 8, *sec.* 104,) "ought not to grant an entrance into his State for the purpose of drawing foreigners into a snare, as soon as he admits them he engages to protect them as his own subjects, and to afford them perfect security as far as depends on him. Accordingly we see that every Sovereign who has given an

asylum to a foreigner, considers himself no less offended by an injury done to the latter than he would be by an act of violence committed on his own subjects." It is then only by obstinately refusing to recognize the negroes in all these cases, in any other light than as irrational animals, and as such the property of a few individuals, that the argument respecting the obligation to extend to the latter *only* the rights of hospitality, can be supported; for the moment it is admitted that slaves are men, it is mere matter of prejudice to deny their equal right to the hospitality, and the protection of Great Britain.

Some stress has been laid on the assumed facts, that the authorities at Nassau interfered to "emancipate" the slaves. The evidence, however, on this head is too clear to admit of doubt. Even the plaintiff's witnesses, in the case of "Lockitt *v.* the Merchants' Insurance Company," show that none of the authorities interfered in the slightest degree with the persons on board of the "Creole," until requested to do so by The United States' Consul, and only then sent a guard on board, with instructions to prevent anybody landing, upon the express understanding "that, as soon as the examinations should be taken, all persons on board of the 'Creole,' not implicated in any of the offences alleged to have been committed on board of that vessel, must be released from further restraint." Except, then, as far as the guard prevented all on board from landing, until an examination had been had, the slaves were under no restraint. They still remained in possession of the vessel; the crew were under their control; and, therefore, according to Mr. Webster's own showing, if the Government of Great Britain had no right to "examine into the relations of the persons on board," it is quite clear that the authorities at Nassau could have no right to interpose by force to reduce the individuals, being the slaves in this case, holding the crew and their former owners in captivity, again into a state of slavery not tolerated by the laws of Great Britain; and it is equally clear that they could not permit the interposition of any other persons with a like intent while the vessel remained within their ter-

ritorial jurisdiction. This brings me to that portion of the evidence which has reference to a plan formed by Captain Woodside and the American Consul to board the vessel, and, with the assistance of the common seamen in the port, to subdue the negroes by force of arms.

I confess my inability to understand the justification which has been attempted by the learned Agent of The United States of this proceeding. Indeed, it is as palpably at variance with the law of nations, and so inconsistent with the existence of peace between countries, that I forbear to enter into its consideration. The British authorities were bound to interfere to prevent its accomplishment, and if this is the "interference" which worked the emancipation complained of, and there is no other pretence of interference, the simple statement of the facts will be sufficient to demonstrate its absurdity. In the course of the argument it was stated that, when the guard came on board, the mutiny had ceased, and then we are asked to infer that the crew had recovered possession of the brig and control over the slaves; but it is impossible for us to do this, in as much as the evidence distinctly shows that the crew never did, in fact, get the upper hand, and the very object of Captain Woodside's plot was to take charge of the vessel "and to help to master the slaves;" and Captain Ensor in his evidence, never pretending that the crew ever recovered the control of the slaves, says "that, provided he had had the offered aid of Captain Ensor, and the two boats' crew armed with muskets, he could have subdued the negroes." So that it appears as a fact, that whatever might have been the result of the attempt,—it never having been made, the relation on board continued the same,—the mutiny, indeed, had ceased, because it had been quite successful; but the white-men were completely in the power of their captors, and except in as far as their personal safety may be considered as guaranteed, under the protection which British laws could yield them, they had changed places with their former slaves.

In conclusion, I shall again briefly advert to that portion of the argument of the learned United States' Agent

which he advanced in the case of the "Enterprize" and upon which my colleague has rested his judgment. I assume that he will take the same ground in these cases, because he has not favoured me with any expression of his opinion, but allows them to go to the Umpire on the same ground and for the same reasons as the "Enterprize."

I do not for a moment question or dispute the principles of international law, as propounded by the learned Agent of The United States' Government, so long as he abstains from engrafting upon them inferences and conclusions which appear to me to be wholly unwarranted. No one can deny, nor do I understand, that any attempt has been made in the present case to deny, the right of all nations to navigate the ocean—to enter the harbours of foreign countries, in distress—and to retain, to some extent at least, and for some purposes, in such harbours, the laws of the country from which the vessel derives a national character. These are all such well-known and universally admitted principles of international law, that authorities are not required to enforce an admission of them in the mind of any one. But the fact is, that these principles are *not* applicable to the circumstances of the cases in which they are now sought to be applied. They have reference simply to the ordinary necessities of commerce, and can have nothing to do with the relations existing between man and man, except where such relations are the result of contracts entered into by men of their own free-will. The preservation of the personal relations of those on board a vessel driven into a foreign port by stress of weather, so much insisted upon, is no doubt a right which all nations claim and admit; but this relation must be a bi-lateral relation, and not one created and maintained solely by the superior strength of one of the parties. To take an instance. The right to make prisoners of war is admitted by international law. To retain such prisoners in custody is also admitted. Suppose, however, that in the transit of such prisoners across the ocean, the vessel is wrecked on a neutral coast, or the captors are overcome by the prisoners, and forced by them to navigate the vessel to a neutral port, could it be contended for a moment that

the authorities of the neutral country would be bound to aid the original captors in retaining or securing such prisoners? Undoubtedly not. Yet the vessel, upon the principle insisted upon by the learned Agent, enjoying the undoubted privilege of shelter, as an incident to its right to navigate the ocean, would carry with it the right to have the jurisdiction of the laws of his country respected; if it followed, as is contended, that the relation of all persons on board, no matter the character of such relation, or its basis, was to be invariably, and under all circumstances, admitted and maintained, the right to maintain prisoners of war in custody, is, in part, identical with the right to keep slaves in custody. Both rights—the former in an infinitely greater degree—are recognized by international law, and sanctioned by municipal law; but both depend on the continuance of the power of the party advancing the right. The moment that power ceases the natural right to personal liberty revives.

But numerous instances might be cited of necessary exceptions to the right of each country to retain in its vessel, in a foreign port, whether driven in by stress of weather or otherwise, the exclusive jurisdiction of its own law. I have already mentioned several, in my judgment in the case of the "Enterprize." One exception is, that nothing can be done on board of such vessel, which is inconsistent with, or contrary to, the laws of the country in which it may happen to be territorially situated. Thus, a white man found teaching a slave to read, could not be flogged, which he might have been some years ago, if the offence was committed in Georgia or South Carolina. Nor could a slave be flogged for striking his owner; and the reason is, that these offences being committed within the jurisdiction of competent tribunals, must be adjudicated upon by them, and by them alone. I mention this to prove that the right of exclusive jurisdiction cannot be maintained to the extent contended for. If it were necessary, however, to force a parallel between an exception thus founded on the results following the commission of an overt act, on board of a foreign vessel, driven into a foreign port by stress of weather, sur-

rounded by all the incidents and all the rights appertaining to such a situation, and the case of slavery, it might be fairly argued—that slavery being, as against the individual held in bondage, a continuous wrong every moment that he was so held, was an offence against the laws of the country in which the individual holding him was thus accidentally territorially situated, and therefore punishable by and under those laws; but all that is necessary to prove is, that the continuance of such a relation as slavery was not contemplated in the admitted rights, described by the learned Agent of The United States' Government, and insisted upon by my colleague, as incident to the free navigation of the ocean, is, that there are some exceptions, and that the one exception in favour of men forcibly held in bondage, any more than that in favour of prisoners of war, does not disturb or affect in any way, the general rules which have been established, and are recognized as applicable to the commercial necessities of civilized communities.

The learned Agent of Her Majesty's Government demonstrated the monstrous consequences which might ensue from the admission of the principle contended for by the learned Agent of The United States' Government. "Suppose," said he, in the course of his argument, "a vessel belonging to a country in which the slave trade was lawful by its municipal laws, actually engaged in the slave trade, and freighted with its human cargo, surrounded by all the loathsome horrors of the middle passage, should put into the port of London for provisions, like the 'Enterprize,' or be navigated in by the slaves who had risen on the crew and obtained possession of the vessel, as in the case of the 'Creole,' or be wrecked, and the lives of all—slaves and freemen—be saved by English boatmen, as in that of the 'Hermosa,' could it be contended that British authorities were bound to admit the slaves, and, more than that, were bound to aid the dealer in retaining his possession of them, and that in the face of laws which declare slavery and the slave trade as repugnant to institutions human and divine?

Yet unquestionably would they be bound to do so, if the principle contended for were to be acted upon."

Apart then from all prejudice, it is evident that no principle of the law or equity of nations can be properly appealed to in support of a proposition so startling and so monstrous as that Great Britain is bound to surrender, as criminals, or failing to do that, to make compensation in the sense of damage, for slaves, who, while their owners were transporting them from one part of the States to another, might rise on the officers and crew, in the hope of obtaining their freedom, and who, successful in such an attempt, should, by intimidating the crew, or by their own efforts, succeed in arriving at a British port, and there place themselves under the power, and claim the protection of British authorities.

NOTE.—Mr. Upham, American Commissioner, did not deliver any judgment in these cases, as he considered that the judgment delivered by him in the case of the "Enterprize" was equally applicable.

THE "CREOLE."

London, 9th January, 1855.

THE umpire reports that this claim has grown out of the following circumstances:—

The American brig "Creole," Captain Ensor, sailed from Hampton Roads, in the State of Virginia, on the 27th of October, 1841, having on board 135 slaves bound for New Orleans. On the 7th November, at 9 o'clock in the evening, a portion of the slaves rose against the officers, crew and passengers, wounding severely the captain, the chief mate and two of the crew, and murdering one of the passengers. The mutineers having got complete possession of the vessel, ordered the mate under threat of instant death should he disobey or deceive them, to steer for Nassau in the Island of New Providence, where the brig arrived on the 9th November, 1841. The American Consul was apprised of the situation of the vessel; he requested the Governor to take measures to prevent the escape of the slaves, and to have the murderers secured. The Consul received reply from the Governor, stating, that under the circumstances he would comply with the request. The Consul went on board the brig, placed the mate in command in place of the disabled master, and found the slaves all quiet. About noon, twenty African soldiers with an African sergeant and corporal, commanded by a white officer, came on board, the officer was introduced by the Consul to the mate as commanding officer of the vessel. The Consul on returning to the shore was summoned to attend the Governor and Council who were in Session, who informed the Consul that they had come to the following decision:—

"1st. That the Courts of Law have no jurisdiction over the alleged offences."

"2nd. That as an information had been lodged before the Governor, charging that the crime of murder had been

committed on board said vessel while on the high seas, it was expedient that the parties implicated in so grave a charge, should not be allowed to go at large, and that an investigation ought therefore to be made into the charges, and examinations taken on oath; when, if it should appear that the original information was correct, and that a murder had actually been committed, that all the parties implicated in such crime or other acts of violence, should be detained here until reference could be made to the Secretary of State, to ascertain whether the parties should be delivered over to The United States' Government, if not, how otherwise to dispose of them."

"3rd. That as soon as such examination should be taken, all persons on board the 'Creole' not implicated in any of the offences alleged to have been committed on board that vessel, must be released from further restraint."

Then two magistrates were sent on board. The American Consul went also. The examination was commenced on Tuesday the 9th and was continued on Wednesday the 10th, and then postponed until Friday, on account of the illness of Captain Ensor. On Friday morning it was abruptly and without any explanation terminated. On the same day, a large number of boats assembled near the "Creole" filled with coloured persons armed with bludgeons. They were under the immediate command of the pilot who took the vessel into the port,—who was an officer of the Government—and a coloured man. A sloop or larger launch was also towed from the shore and anchored near the brig; the sloop was filled with men armed with clubs, and clubs were passed from her to the persons in the boats; a vast concourse of people were collected on shore opposite the brig. During the whole time the officers of the Government were on board, they encouraged the insubordination of the slaves. The Americans in port determined to unite and furnish the necessary aid to forward the vessel and negroes to New Orleans. The Consul and the officers and crews of two other American vessels in fact combined with the officers, men and passengers of the "Creole," to effect this. They were to conduct her first to Indian Quay, Florida, where there was a vessel of war of The United States. On Friday

morning, the Consul was informed that attempts would be made to liberate the slaves by force, and from the mate he received information of the threatening state of things. The result was, the Attorney General and other officers went on board the "Creole;" the slaves identified as on board the vessel concerned in the mutiny were sent on shore, and the residue of the slaves were called on deck by direction of the Attorney-General, who addressed them in the following terms:—"My friends" or "My men, you have been detained a short time on board the 'Creole' for the purpose of ascertaining what individuals were concerned in the murder. They have been identified and will be detained. The rest of you are free and at liberty to go on shore, and wherever you please." The liberated slaves assisted by the magistrates, were then taken on board the boats, and when landed, were conducted by a vast assemblage to the Superintendent of Police, by whom their names were registered. They were thus forcibly taken from the custody of the master of the "Creole," and lost to the claimants.

I need not refer to authorities to shew that slavery, however odious and contrary to the principles of justice and humanity, may be established by law in any country, and, having been so established in many countries, it cannot be contrary to the law of nations. The "Creole" was on a voyage sanctioned and protected by the laws of The United States, and by the law of nations; her right to navigate the ocean could not be questioned, and, as growing out of that right, the right to seek shelter, or enter the ports of a friendly power in case of distress or any unavoidable necessity.

A vessel navigating the ocean, carries with her the laws of her own country, so far as relates to the persons and property on board, and to a certain extent even in the ports of the foreign nations she may visit. Now this being the state of the law of nations, what were the duties of the authorities at Nassau, in regard to the "Creole?" It is submitted the mutineers could not be tried by the courts of that Island, the crime having been committed on the high seas. All that the authorities could lawfully do was to comply with the

request of the American Consul, and keep the mutineers in custody until a conveyance could be found for sending them to The United States. The other slaves being perfectly quiet and under the command of the captain and owners, and on board an American ship, the authorities should have seen that they were protected by the laws of nations, their rights under which cannot be abrogated or varied either by the Emancipation Act or any other Act of the British Parliament. Blackstone, 4th volume, speaking of the law of nations, states "Whenever any question arises, which is properly the object of its jurisdiction, such law is here adopted in its full extent by the common law."

The municipal law of England cannot authorize a magistrate to violate the law of nations, by invading with an armed force the vessel of a friendly nation that has committed no offence, and forcibly dissolving the relations which, by the laws of his country, the captain is bound to preserve and enforce on board. These rights, sanctioned by the law of nations, viz., the right to navigate the ocean and to seek shelter in case of distress or other unavoidable circumstances, and to retain over the ship, her cargo, and passengers, the laws of her own country, must be respected by all nations, for no independent nation would submit to their violation.

Having read all the authorities referred to in the arguments on both sides. I have come to the conclusion that the conduct of the authorities at Nassau was in violation of the established law of nations, and that the claimants are justly entitled to compensation for their losses; I therefore award to the undermentioned parties, their assigns, or their legal representatives, the sums set opposite their names, on the 15th January, 1855, viz.:

To Edward Lockett,	Twenty-two thousand two hundred and fifty dollars.
„ John Pemberton, Liquidator of the Merchant's Insurance Company of New Orleans,	Twelve thousand four hundred and sixty dollars.

To John Hagan	Eight thousand dollars.
„ William H. Goodwin, for self and Thomas Mc Cargo,	Twenty-three thousand one hundred and forty dollars.
„ G. H. Apperson and Sherman Johnson,	Twenty thousand four hundred and seventy dollars.
„ P. Rotchford	Two thousand one hundred and thirty-six dollars.
„ John Pemberton, Liquidator of the Merchant's Insurance Company of New Orleans,	Sixteen thousand dollars.
„ James Andrews,	Five thousand eight hundred and seventy-four dollars.

making together one hundred and ten thousand three hundred and thirty dollars.

JOSHUA BATES, *Umpire.*

The "Hermosa."

London, 11th January, 1855.

The umpire reports that the schooner "Hermosa," Chattin, Master, bound from Richmond, in Virginia, to New Orleans, having 38 slaves on board, belonging to H. N. Templeman, was wrecked on the 19th October, 1840, on the Spanish Key, *Abaco*.

Wreckers came alongside and took off the captain and crew, and the 38 slaves, and, contrary to the wishes of the master of the "Hermosa," who urged the captain of the wrecker to conduct the crew, passengers, and slaves to a port in The United States, they were taken to Nassau, New Providence, where Captain Chattin carefully abstained from causing or permitting said slaves to be landed or to be put in communication with any person on shore, while he proceeded to consult with the American Consul, and to make arrangements for procuring a vessel to take the crew and passengers, and the slaves to some port in The United States. While the vessel in which they were brought to Nassau was lying at a distance from the wharves in the harbour, certain magistrates, wearing uniform, who stated themselves to be officers of the British Government, and acting under the orders of the civil and military authorities of the island, supported by soldiery wearing the British uniform and carrying muskets and bayonets, took forcible possession of said vessel, and the slaves were transported in boats from said vessel to the shore, and thence, under guard of a file of soldiers, marched to the office of said magistrates, where after some judicial proceedings, they were set free, against the urgent remonstrances of the master of the "Hermosa" and of the American Consul.

In this case, there was no attempt to violate the municipal laws of the British Colonies, all that the master of the "Hermosa," required was that aid and assistance which was

due from one friendly nation to the citizens or subjects of another friendly nation engaged in a business lawful in their own country, and not contrary to the law of nations.

Making allowance, therefore, for a reasonable salvage to the wreckers, had a proper conduct on the part of the authorities at Nassau been observed, I award to the Louisiana State Marine and Fire Insurance Company, and the New Orleans Insurance Company (to which institutions this claim has been transferred by H. N. Templeman), or their legal representatives, the sum of sixteen thousand dollars on the fifteenth January, 1855, viz., eight thousand dollars to each Company.

JOSHUA BATES, *Umpire.*

McCalmont and Co.

London, 26th December, 1854.

The umpire reports that The United States' authorities made no charge for convoy, and took no risk; the mules, with their loading, were seized by Mexican soldiers or robbers, and The Government of The United States appears in no way responsible for the loss of the goods, and the return of the duties paid on the goods would, if allowed, be merely an act of liberality on the part of the Government, this Commission has no power to dispense such liberality, therefore no compensation can be awarded.

JOSHUA BATES, *Umpire.*

Note.—This case was not formally disagreed upon by the Commissioners. The umpire's opinion was only taken upon the point, whether or not, in cases like the present—namely, one of great hardship—the Commissioners were justified in awarding a return of the duties which had been levied and paid on the goods.

The "Lawrence."

London, 4th January, 1855.

The umpire reports, that the brig "Lawrence," York, Master, under American colours, and having an American register and papers, bound from Havana to Cabenda, in Africa, with a cargo of rum, &c., having sprung a leak, and put into Gallenas, on the coast of Africa, 10th September, 1848, being unable to stop the leak there, it was determined to proceed to Sierra Leone, where they could beach the vessel and repair her. She arrived at Freetown on the 22nd September, and on the 25th she was seized and libelled in the Vice-Admiralty Court for being found in a British port equipped for the Slave Trade, condemned, and the vessel and cargo decreed forfeited to the Crown.

The cargo shipped at Havana on board the "Lawrence" consisted of—

60 pipes
116 half-pipes } rum.
30 barrels of flour.
4 boxes of beads.
48 boxes of segars.
1 box woollen caps.
10 barrels of beans.
39 barrels of corn meal.
5 barrels of pork.
5 barrels of beef.
46 buckets.
2 packages tin ware.

Which by charter party were to be delivered at Cubenda, in Africa, for a freight of 3250 dollars. It is not denied that the papers were in order as an American vessel. The crew, excepting one man, were Spanish, and could not speak

English, nor could Captain York speak Spanish. There were two supercargoes, one Spanish and one French, on board. Looking at the voyage as a trading operation, it appears simply absurd. The whole value of the cargo would not exceed 600*l.*, on which 700*l.* freight was to be paid; but looking at the vessel as to be a slaver whenever the opportunity should offer so to employ her, the cargo and the fittings would appear well arranged for the business, and in conformity with the fittings of several vessels under the American flag that had been overhauled by cruisers, and suffered to pass on account of the flag, but were soon afterwards captured with slaves on board under Spanish or Portuguese colours.

The African Slave Trade at the time of this condemnation, being prohibited by all civilized nations, was contrary to the law of nations, and being prohibited by the laws of The United States, the owners of the "Lawrence" could not claim the protection of their own Government, and therefore, in my judgment, can have no claim before this Commission.

JOSHUA BATES, *Umpire.*

McCalmont and Co.

Mr. Hornby, British Commissioner:

This Claim is in the nature of an appeal to the sense of equity of The United States' Government; and it being, as I conceive, the intention of the Contracting Parties to the Convention of 1853, under which we act, that the Commissioners should decide upon all claims duly submitted to them according to justice and equity, I am of opinion that it is properly brought under our notice.

From the investigation which has already taken place into the circumstances, and from the correspondence between the two Governments, it appears that the claimants are British merchants carrying on business at Vera Cruz. In the early part of 1847 they, in the ordinary course of their business, prepared extensive shipments of goods from England, nearly the whole of which were suited only for the markets of Mexico. In consequence of the blockade of the Mexican ports, which was declared by The United States on the 20th of May, 1847, the claimants' correspondents dispatched the vessels conveying the goods to the Havannah, there to await the orders of the owners.* The claimants directed them to remain there until the ports of Mexico should be opened.

On the capture of Vera Cruz by The United States' forces, General Worth (who was in command of the troops occupying that place) published on the 5th of April, a tariff bearing date "Vera Cruz, the 31st March, 1847," by which the port was opened to foreign commerce, and the same duties were imposed as in The United States, with 10*s*. per cent. *ad valorem* additional.

This tariff appearing objectionable in several particulars,

* Arrived at the Havannah during the months of July and August, 1846.

the British and foreign merchants resident at Vera Cruz, on the 6th April memorialized General Worth on the subject, and he—in consequence of their remonstrances—made some modifications in the tariff. On the faith of this tariff thus modified, the claimants transmitted orders to their correspondents in Havannah to send on their goods to Vera Cruz, and they accordingly arrived in the "Susan" and "George W. Randall," on the 20th and 27th of May.

In the interval between the sending of the directions by the claimants to their correspondents to forward the goods and their arrival, namely on the 7th of May, a new tariff, which had been published at Washington on the 31st of March, came into operation at Vera Cruz. Foreseeing the losses they would sustain, if all the provisions of this tariff were enforced on the goods they were daily expecting, the claimants, in conjunction with other British merchants, submitted to The United States' Government a statement of the hardships they had to complain of.

On the arrival of the goods, Messrs. McCalmont, Greaves, and Company, noted protests before the Collector of Customs (through Her Majesty's Consul) against the application of the Washington tariff to their case, because in several instances the duties would be more than the value of the goods in the market, and because they had been ordered to be sent on, on the faith of General Worth's tariff continuing in force.

The Collector of Customs agreed that the goods should remain in deposit until replies should be received to the representations which the claimants had transmitted to Washington.

The goods accordingly remained in deposit until the arrival of an order from Washington dated the 10th of June, by which the tariff was again altered, and the evils which had formed the subject of the British merchants' representations almost entirely removed. Upon the receipt of this order the claimants proposed to pay the duties imposed by it on the goods which had arrived by the "Susan" and "George W. Randall," and had since remained in deposit,

—but were informed that the modifications which had formed the object of their previous representations, and for which they had waited, were not to be applied to their goods; and on the 22nd November the claimants were compelled to pay for duties—

On the goods by the "Susan"	....	$84,952·43
On goods by the "G. W. Randall"	....	12,316·82
		$97,269·25

being $18,877·87 cents more than they would have had to pay under the order of the 10th of June, for which they had waited, and which they had exerted themselves to obtain on account of those very goods, and *under which their rivals in business were then importing similar articles, being also far more than they would have had to pay either under the Mexican tariff or under that published by General Worth.*

In short they were unable to compete either with those traders who imported *previous* to the arrival of the "Susan" and "G. W. Randall," or *after* their arrival.

The amount of excess is made out in the following manner:—

On 54 bales of woollen and worsted fabrics per invoice, $7813·35, the claimants had to pay for duties $11,106·58.

By the order of Washington the duties of these goods would be only $2344. Under the Mexican tariff they would have been $3776·97, showing an excess of $8762.

The duties in this case are equal to 142 per cent on the original value, and exceed the market value. On cotton fabrics the claimants had to pay—more than they would have had to pay under the new tariff by $7154·29; to which must be added $2961 in respect of abatement on damage which the claimants would have been entitled to under the new tariff, making a gross total of excess duties paid, $18,877.

The United States Government have hitherto resisted this claim on two grounds,*—the first being—that a similar application, made by Baron Gerott, the Prussian Minister,

* See Mr. Marcy's Despatch to Mr. Crampton of the 8th of January, 1848.

on behalf of certain German merchants, had been refused; the second, that the Act was not retrospective, and that the Secretary of the Treasury could not remit the duties. With respect to the first ground it will be found, as appears by Mr. Marcy's despatch of June 26th, 1847, to Baron de Gerott, that the application of the German merchants was in fact very different, although he supposed it to be "similar," from that made by the present claimants. Those merchants (the Germans) shipped their goods from Germany with reference to the Mexican tariff. Immediately, and at the time, however, of their actual arrival, General Worth's tariff was in force, which had reduced the duties very considerably; but before their goods were fully entered, the tariff of the 30th March, raising the duties levied under General Worth's tariff, *but still placing them much below the Mexican tariff*, came into operation; and it was from paying the duties under this last tariff that they sought relief. The United States' Government, however, very properly conceived that the merchants, having actually shipped those goods on the faith of the heavy Mexican tariff, could not complain of having to pay the comparatively light tariff of the 30th March, although a still lighter one, namely, that established by General Worth, might have intervened, and actually did intervene, between the two. But this is *not* the case of the claimants: their agents at Vera Cruz ordered on the cargoes from the Havannah on the faith of General Worth's tariff; and it is from the mistakes which had inadvertently crept into the Washington tariff, and which as soon as pointed out were corrected, that they seek relief; they having themselves pointed out the mistake and deposited their goods to abide the correction; that correction, however, when made, being declared not retrospective in its effects. The precedent of the German merchants is then inapplicable to the present case, and cannot be considered as binding on The United States' Government so as to prevent them granting the relief now prayed.

With regard to the second ground of objection, it may be that the Act of Congress was not retrospective; but this fact

does not lessen the right of the Claimants to equitable relief —on the contrary, it is this fact which renders the present claim necessary. Neither is it an answer to the claim to say that relief could not be granted under the Act of the 3rd of March, 1849, which only enables the Secretary of the Treasury, without application to Congress, to grant relief to merchants in respect of duties "improperly levied or imposed." The duties however in this case, IN STRICT LAW, were "properly levied and imposed," because there was in existence a tariff imposing them sufficient in itself to warrant the levying; but this imposition was founded on a mistake, and when the mistake was corrected, which it was immediately on being pointed out (the goods in the meantime being kept in bond), both justice and equity seem to me to point to the relief of the claimants. Nor in granting this relief would any advantage be given to them over other merchants, for all they wanted was to be allowed to introduce their goods into the market, paying the same duties that goods introduced at the same time were paying; and, this being denied to them the claim arises.

It is clear to me that Mr. Rockwell's opinion ONLY went to the practicability of granting relief under the Congressional Act of the 30th of March, 1849. The Commissioners however have nothing to do with that Act, which is applicable only to the Secretary of the Treasury. If we find the claim to be a fair and equitable one, we are bound to admit it, leaving in the case of The United States to Congress, and in that of Great Britain to Parliament, the provision of the means of paying what we award.

Looking then at the fact that those goods were ordered on to Vera Cruz on the faith of one tariff;

That on arriving there they were met by a tariff which imposed duties that amounted to a complete confiscation of their goods;

That the goods were deposited, or in other words allowed to remain in bond under the seals of the Collector;

That they were afterwards compelled to pay these duties,

and to introduce the goods into the market, at the same time that goods paying the modified duties were introduced;

That in the opinion of Mr. Dimond, the Collector of Vera Cruz, who knew all the circumstances, the claimants' case "was fairly stated, and well entitled to the considerate attention of the Government," and that the professed object of the Government, as stated by Mr. Walker in his preamble to the tariff of the 30th of March (in which the mistake was made), was to "substitute a moderate duty when compared with that imposed by Mexico," but which in fact, through the mistake made and afterwards corrected, "substituted an exorbitant duty when compared with that imposed by Mexico," the claimants are on every principle of equity entitled to the benefit of the correction, and to have their goods placed on the same footing as similar goods introduced at the same time in the same market.

A doubt has been raised by my colleague as to whether, Mr. Walker having stated his inability to remit the excess duties, we are able to go behind his authority, and do that which he could not do. In this doubt I confess I do not participate. It is clear to my mind that, finding a claim to be a just one, and deserving of relief, we are by the terms of the Convention bound to admit it, *wholly irrespective of whether or not any officer of either Government could or could not, under any particular Statute, have given the relief prayed for.*

It is clear that Congress itself could have given the relief if, on examination, it was found to be a case in which the parties were equitably entitled to it; and I hold that Congress through the Executive of The United States, and Parliament through the Executive of Great Britain, have delegated to us the task of inquiring into all claims, properly presented under the first and third sections of the Convention of 1853, and of deciding upon their merits whether they are entitled to redress or not; and if to redress, to what amount.

To hold otherwise might have had the effect of frustrating the whole object of the Convention, for it is not to be

assumed that either Government knew particularly what were the exact nature and extent of the powers of individual Officers of State under the respective Constitutions of the two countries.

I award therefore the sum of 18,877 Dolls. 87 cents., with interest at per cent.* from the 22nd November, 1847, to the 15th January, 1855.

* Rate of interest in Mexico in 1847. I have always been of opinion that a uniform rate of interest should be allowed to the claimants of both countries when the circumstances justify the allowance of any interest. My colleague, however, and the umpire think differently. They are of opinion that the legal rate of interest prevailing in the country of each claimant should be allowed. The effect, however, of this determination, is to award interest to British claimants—no matter where resident, or where they were about to employ the money of which they may have been deprived—at the rate of five per cent., and to American claimants of at least six per cent. I am therefore compelled, although against my will, in cases like the present (as a matter of form because the decision of the umpire, so far as regards British claimants, is against me), to award interest at the rate prevailing in the country where the money would have been used.

MR. UPHAM, United States' Commissioner:

THIS case presents the common complaint of hardship that always arises whenever an advance of tariff is made contrary to the expectations of the importer.

It involves two difficulties for our consideration. In the first place, this Commission has no power to alter and control the clear and explicit effect of a tariff established by either Government, in order to grant lighter terms than such law had established.

It is an exercise of legislative power not confided to us, or of a dispensing power which is equally unauthorized.

In a second place, the application now addressed to our discretion has been already addressed to the Government at Washington, and has been denied, under an immediate knowledge at the time of all the circumstances of the case. A modification of the tariff was made as requested in reference to woollens and one description of cotton goods, but was directed to take effect *prospectively*, for the reason that the duties, under the prior tariff, had been paid on various importations, and it was not supposed the case was such as to require a retro-active effect.

This decision was afterwards adhered to on the application of some German merchants; notice of which was communicated to the British Minister, by letter of Mr. Marcy, Secretary of State, on the 8th of January, 1848.

Were the case in our control, the same reasons that operated on the department, in making this decision, should operate on us at this time, but there is no right of appeal to us from their decision. We may give a construction in matters of strict law to an established tariff different from that given by the officers of the Government; but their decision on matters confided by law to their discretion is final. We cannot go behind the tariff to overrule it.

Some confusion exists in the statements as to the tariff complained of. My colleague, in speaking of the application

of the German merchants, says that the tariff of the 30th of March, though higher than General Worth's tariff, was "much *lower* than the Mexican tariff." In another portion of his opinion, speaking of the same tariff, in reference to this claim, he says "the duties were much *higher* than the Mexican tariff." These diversities are accounted for by the fact that the remarks apply to different portions of the tariff. On cotton goods, with the exception of a particular article of that description, the duties were much lower, while on woollens, they were much higher than under the Mexican tariff.

The importation of the claimants in this case consisted both of cotton and woollen goods, in large quantities of each. My impression is that, on the whole importation, they were gainers by the change of Governments, at least that their loss was of but small amount. If so, it would obviate any appeal on account of the general hardship complained of, and the case resolves itself into a mere question as to what extent the claimants should profit by the American occupation of Mexico. It is certain that the damage is much less than would appear from the operation of the tariff on one class of goods alone.

The views of my colleague that "if we find the claim to be a just one, and deserving of relief, we are bound, by the terms of the Convention, to grant it, wholly irrespective of the question whether any officer of either Government could, or could not do so, under any particular Statute," and that we can grant relief "in any case where Congress could have given it, if on examination it was found to be a case in which the parties were equitably entitled to it," I cannot consent to.

For the reasons given, I am of opinion no proper ground is presented for the exercise of our authority within the powers assigned to us.

"McCalmont & Co."

London, 8th January, 1855.

The umpire reports that this claim arises out of the following circumstances:—Messrs. McCalmont, Greaves and Co., being engaged in the trade to Mexico did, in the year 1846, prepare a large amount of goods for that market; but hearing of the declaration of war and blockade of the Mexican ports by the forces of The United States, they shipped their goods to Havana, there to wait the removal of the blockade and the order of their Vera Cruz partner. These goods were prepared for the Mexican market under the supposition that they would have to pay duties according to the Mexican tariff. Vera Cruz was captured by the American forces in March, 1847, and General Worth opened the trade and issued on the 31st March a *temporary* tariff to remain in force until further orders from The United States Government at Washington. This *temporary* tariff established generally the same duties as were payable in The United States, with 10 per cent *advalorem* in addition. Representations were made to General Worth, and he, in consequence, made some alterations in his *temporary* tariff. After these modifications, the claimants' partner at Vera Cruz sent orders to Havana for their goods to be sent forward. They were shipped per "Susan," and per "William Randall," and were daily expected to arrive when the new tariff (dated 31st March) arrived, from Washington, the provisions of which were very injurious to the interests of the claimants, who remonstrated and sent immediately to Washington, praying for modifications. The "Susan," and "William Randall," arrived on the 27th May. The Collector of the Customs at Vera Cruz permitted the goods to remain in deposit until an answer came from Washington to the representations of the claimants. On the 10th June, an order came from Washington altering the tariff, and left

nothing to be desired. The claimants then proceeded to the Custom House to pay their duties according to the improved tariff. The Collector refused to receive such duties, but demanded the duties of the unmodified tariff of The United States (of the 31st March), which the claimants were compelled to pay, viz., on 54 bales woollen and worsted goods—

Amount paid	£11,106·58
Would have paid under the modified tariff, 30 per cent	2,344
Excess	8,762·58
The claimants demand an abatement of duty in consequence of damage on their whole importation of	2,961
Together	£11,733·58

It cannot be said that these duties were not levied according to law; nevertheless, as the modifications in the tariff were made at the suggestion of the claimants, it seems a hard case that they should be the only parties not allowed the benefit of the alteration. The documents appear to be in order and certified by F. M. Dimond, Collector. It is pretty certain that the authorities at Washington did not quite understand the case, or I think they would have allowed the claimants the benefit of the provisions of the modified tariff. I therefore award to Messrs. McCalmont, Greaves and Co., or their legal representatives, the sum of eleven thousand seven hundred and thirty-three dollars fifty-eight cents, on the fifteenth January, 1855.

The claim for £7154·29 for overcharge of duties on cotton goods I reject, believing it not right to select a particular kind of cotton goods from a large invoice on which to make a claim, when the duties on the other portion must have been far lower than they would have paid under the Mexican tariff. These duties as before stated, were levied in conformity with the law, and it is only the peculiar circumstances and hardships in the case of the woollens that could justify this Commission in granting any portion of the claim.

JOSHUA BATES, *Umpire.*

Messrs. Kerford and Jenkin.

Mr. Hornby, British Commissioner:

In considering the case, stated that he came to a different result from his colleague; he regarded the special licence given to the claimants to continue their trade with Mexico, extended not merely to the frontier, but to the interior, and that The United States' Government having once given the licence, it was not competent for an officer of that Government at his own will and pleasure practically to revoke it, by detaining the claimant's goods; but if the necessities of war, or the public safety rendered this detention necessary, and the Government ratified the act of its officers, it was properly answerable for the loss occasioned.

He was of opinion also, that the burden of proof, showing the necessity of detention, was on the Government, and should not have been left as a mere matter of inference to be drawn from the general facts in the case, but that direct evidence should have been given on the point; and that substantially the same evidence existed in this case as in the case of *Harmony* v. *Mitchell*, cited by counsel, where the jury found for the plaintiffs.

MR. UPHAM, United States' Commissioner:

THE abstract of the case drawn up presents fully all the particulars necessary for its consideration. There is no doubt that the detention of the caravan, caused by the military forces, which were also proceeding to the same point in the enemy's country, was a serious damage to the claimants. There is good reason to believe the damage would have been far greater, however, had no permission been granted to proceed with the goods beyond Philadelphia, as they were ordered especially for the Mexican market.

The permission given was designed for the relief of the claimants on account of the particular circumstances of the case, and was so received. Injustice has been done to the Government by representing it as a pledge or guaranty that the caravan should proceed unmolested by the war existing between the two countries; but the exact reverse of this is the fact. The goods were allowed to proceed, with the benefit of a drawback for the return of duties, but they were to incur all the risks dependent on the condition of the two countries on their arrival at Santa Fé, on the frontier, and in their further progress to the interior of Mexico.

It was specially stated in the permit that it was granted on account of "the peculiar circumstances of the case, and *without giving rise to any inferences as regards the condition of Santa Fé*, or to act as a precedent in other cases."

Its evident purport, as I have stated it, could not have been misunderstood.

The sole question, then, which arises in the case is, whether the subjection of these parties to the incidents attending a state of war in Mexico constitutes a just ground of claim against The United States. It is not denied, I believe, that their detention was eminently demanded as a precautionary measure for the security of the American troops. The American forces were then proceeding on a

very desperate adventure into the heart of the enemy's country, against a force far greater than their own, and for the capture of an extensive province, having a large population.

Their sole security depended on the want of knowledge, on the part of the Mexicans, of the number and condition of the men sent against them. The claimants were also taking to the very forces arrayed against the Americans merchandise of immediate use to those forces, and upon which the enemy would receive at once a large amount of material aid in the duties to be levied upon the goods.

The detention of the claimants' caravan, under these circumstances, was evidently a military necessity.

The claimants voluntarily incurred the risk of this liability with the permission to do so, as a special favour from the American Government, and with full warning as to the contingencies to which they might be subjected.

The claim, then, which is made in this case comes with a bad grace from these parties. Had the goods been confiscated after they were permitted to proceed with them to the frontier, or had they been unnecessarily detained, or had there been any wilful harshness in the mode of carrying into effect the measures adopted, a claim might, perhaps, have been sustained; but there is no evidence of this character on either of the points named.

The learned counsel for the British Government has cited the case of *Harmony* v. *Mitchell*, 13, *Howard Rep.*, 115, as in point, and, in other respects, has argued the case with his usual eminent ability. In the case cited, however, a large portion of the goods, then on their way to the Mexican market, under circumstances similar to the present case, were *seized and converted to the public use*, and the remainder were abandoned.

The jury also found that the seizure was not caused by urgent or immediate necessity. The case, therefore, is wholly diverse from the present.

There are serious doubts whether the finding of the jury in that case was warranted by the evidence as reported, but,

with the facts thus found by them, the judgment of court follows, of course.

In the case before us, there is no reason to doubt that the *detention* of the caravan was dictated by imperious necessity, and was an exercise of power clearly within the acknowledged and just right of the commander of the American forces. The claimants stood in no relation to The United States' Government that relieved them from such a necessity. Their venture was, moreover, a successful one, though their profits would have been much larger had no detention occurred. I see, therefore, no just ground to sustain this claim on any principle of law or equity.

Messrs. Kerford and Jenkin.

London, 10th January, 1855.

The umpire reports that this claim is put in on behalf of Messrs. Kerford and Jenkin, who have been established in Zacaticas as merchants for eighteen years, and have been engaged in trade with Santa Fé, Chihuahua, and other places in the adjoining districts.

The facts and circumstances alleged are as follows:—In the year 1845 (3rd March), the Congress of The United States passed an Act, authorizing the export ofmerchandize overland to Canada and to Mexico, *viâ* Santa Fé, with the benefit of a drawback of duties; and the claimants had, in 1846, prepared in England a quantity of goods suited to the Santa Fé trade, and apparently not suited to any other market. These goods arrived in Philadelphia by the ship "Sarawak," in June, 1846; the Customs' entry is dated 19th June, 1846; at which time war was declared by The United States against Mexico, and all commercial intercourse stopped. The Agents of the claimants on 18th June, 1846, petitioned the Government of The United States, stating that these goods had been prepared expressly for the Santa Fé trade, and, being suited to no other market, immense loss would be sustained if they were not permitted to carry out their views; and that they had 500 mules, 40 wagons, and forty-five men waiting at Fort Independence for the goods, at the charge of Mr. Kerford and partners; they, therefore, prayed permission to send their goods forward with benefit of drawback.

The United States' Government granted the application "under the peculiar circumstances involved, and without giving rise to any inferences as regards the condition of Santa Fé, or to act as a precedent in other cases." The

export entry was dated 29th June, 1846, for 986 packages, goods to Santa Fé and Chihuahua, by the route of the Missouri river, and the invoice value, exclusively of charges, was 14,210*l.* 16*s.* 11*d.* The goods arrived at Fort Independence *in transitu* for Santa Fé, in New Mexico; the Inspector's certificate is dated the 30th July, 1846; and the caravan consisting, according to Mr. Kerford's statement, of 45 wagons, 600 mules, 250 oxen, and about forty horses, value about £80,000; but, according to Mr. Gentry's statement, of 46 wagons, 500 mules, 350 oxen, and 20 horses, value about £68,150, started from Fort Independence, under the care of 80 armed men, in the month of August, the precise day not stated, but late in the season, the month of May being the best month to start in.

After six weeks' march, without interruption, they were overtaken by a detachment of Missouri volunteers, under Colonel Price, to whom Mr. Kerford exhibited the permit, and other papers received from the custom-house at Philadelphia, and represented that he was a British subject. Colonel Price examined every wagon, and detained the caravan ten days, and then suffered it to proceed, and they arrived at Santa Fé, according to Mr. Kerford, on or about the end of October, but the Consular certificate for the return of the duties was dated Santa Fé, 7th October, 1846.

On their arrival at Santa Fé, Mr. Kerford waited on General Kearney, The United States' commander of the district, and complained to him of the treatment he had received from Colonel Price. General Kearney assured him that the road was open to Chihuahua, and that he might proceed with his caravan without risk of further interruption, upon which they proceeded for several days, and had arrived in a wild country, where no supplies or provisions could be obtained, when they were stopped by another body of American volunteers, under the command of Captain Walton, who, on being informed that the goods were British property, allowed them to proceed; but, at the end of two days, sent a body of 200 men after them, who commanded them to halt, and mounted guard round the wagons, with orders to shoot

the first man who should attempt to move. They thought it best to submit, although capable of forcing a passage, as the men were all accustomed to the use of fire arms.

About a month afterwards, Colonel Doniphan took the command of the forces. It appeared to be the duty of the claimant to submit, and he, with the caravan, was detained for two months, according to Mr. Kerford, but according to Mr. Gentry for six weeks, during which the men were exposed to the inclemency of a severe winter, and were reduced to extreme want, and many of the mules and oxen perished. The claimant applied to the Commissary for relief, but was refused on the ground that the troops were on half rations. During the whole of this detention the claimant made repeated applications to be released, which were refused on the ground that the introduction of so much valuable property, though it did not include any munitions of war, would be a great advantage to the enemy from the duties accruing upon it.

At length Colonel Doniphan moved forward to attack Chihuahua, the caravan being ordered to travel in the rear, until a battle took place, in which the Americans were successful. Even then the caravan was not allowed to proceed, but was detained for several weeks (six weeks according to Mr. Gentry), when the vigilance of the guard having been relaxed, they prosecuted the journey and reached Chihuahua the latter end of February, 1847, having been detained three and a half months beyond the time usually required for the journey.

In consequence of this delay, the goods were sold at nearly thirty per cent. below what they would have realized at an earlier period.

To show how little reliance can be placed on the only evidence in support of this claim, the following notes from depositions on oath of Mr. Kerford and Mr. Reuben Gentry are placed in juxta-position, remarks thereon being made in italics:

Mr. Kerford's statement.

Messrs. Kerford & Jenkin were established in trade at Zacaticas for 18 years.

Imported 986 packages, goods, "Sarawak," and obtained leave, on petition, to export the same under drawback.

Goods forwarded to Fort Independence, Caravan consisted of 45 wagons, about 600 mules, 250 oxen, about 40 horses, value about $80,000, under escort of 80 men. Caravan started from Fort Independence in *August*, 1846.

Proceeded six weeks without interruption, when they were overtaken by Colonel Price, who examined all the wagons, &c., and forcibly detained the caravan 10 days. They were then permitted to proceed.

Mr. Reuben Gentry's statement.

Reuben Gentry was general manager of the caravan in 1846.

There were 986 packages of goods.

The caravan consisted of 46 wagons, 500 mules, 350 oxen, 20 horses; value, $68,150, under conduct of 80 men.

Started from Fort Independence early in July, 1846.

(*This is clearly incorrect; the goods were not there at this time.*)

Proceeded without interruption as far as Council Grove, Missouri, and were then overtaken by two companies of volunteers, under Captain McMillan and Horan, who overhauled the caravan and detained them one day. They went on for three days, and were overtaken by volunteers under a subaltern, who detained them by order of Colonel Price for 10 days, at Cotton Creek, when Colonel Price came up and examined all the wagons, &c. In consequence of this delay, they did not reach the watering-

The caravan arrived at Santa Fé on or about the end of October.

(*The Consular Certificate for return of duties, was dated 7th October*, 1846.)

At Santa Fé Mr. Kerford waited on General Kearney, and was assured that the road was open, &c.

After leaving Santa Fé, proceeded several days till they arrived in a wild country, &c., were stopped by another body of American volunteers, under Captain Walton, allowed to proceed, but after two days, Captain Walton sent 200 men, who forcibly detained them. About a month afterwards Colonel Doniphan took the command.

Found it necessary to submit, and were detained *two months* during inclement weather, in which they suffered most severely, and lost many of the mules and oxen.

Supplies refused by the United States' Commander, place that day. At night many of the oxen broke loose, and while the men were looking for them, the Indians came and carried away 35 mules; they lost, also, 15 oxen. The result of the detention was that three weeks were consumed, beyond the usual period, in reaching Santa Fé. Mr. Kerford had to go forward into New Mexico and buy mules at exorbitant prices.

Proceeded towards Chihuahua, and reached Val Verde early in November; were then stopped by Captain Walton, and forcibly detained *six weeks*, after which Colonel Doniphan took the command. Permission to proceed refused, although repeatedly applied for to Captain Walton and Colonel Doniphan.

(*Query.—Was it six weeks or two months? Which statement is correct?*)

and repeated applications for permission to depart refused, on the plea that the duties on the goods would aid the enemy.

On 14th December sent a formal protest.

At length Col. Doniphan came up with reinforcements, and they marched forward, the caravan following in the rear. Followed till a battle was fought, in which the Americans were successful. Even then were not allowed to proceed, and again detained several weeks.

(*This part of the narrative, by which the great loss of mules, &c., is to be accounted for, appears to be assigned to an earlier period, and a different locality in Mr. Kerford's statement.*)

The vigilance of the guard having relaxed, went on, and reached Chihuahua in the latter end of February, 1847.

(*In Mr. Kerford's statement of the claim, they are said to have arrived in April*, 1847. *He makes a charge of interest to the* middle of April.)

On 14th December sent a formal protest.

The troops under Colonel Doniphan proceeded towards El Paso; caravan followed in the rear; reached El Paso about the end of December. During this march the cattle was subject to great privations; there was no grass and little water, and many of the oxen, mules, and horses died. Detained there fully six weeks; the cattle being nearly all starved with cold and want of food, many oxen and mules died, and almost all the horses. Permission to proceed still refused, which Mr. Gentry attributes to undue influence of other traders, fearing the large supply would surfeit the market.

After six weeks escaped the vigilance of the American forces, and reached Chihuahua towards the end of February, 1847. They ought to have arrived by the 1st of Nov., 1846.

(*This would not allow three months for the journey.*)

Expended fully $40,000 in the purchase of food, &c.

(*Mr. Kerford claims* $60,000 *for losses by forced sales in procuring food, &c.*)

Believes Colonel Doniphan had no orders to go beyond Santa Fé. General Kearney told them they might go on to Chihuahua, and many traders did so.

Marked value of goods depreciated 30 per cent; goods sold nearly 30 per cent. below what they would have done at an earlier period.

Prices of the goods had fallen 25 to 30 per cent.; can speak with certainty to the fact, having been engaged in this business in Chihuahua during the year 1845 and most of 1846. Large sales were also forced to buy food, &c.

(*Mr. Gentry was absent during the period in question, and cannot, therefore, speak from his own knowledge.*)

To add to their losses, The United States' Army imposed an export duty on specie of 6 per cent.

(*This cannot have affected Mr. Kerford's interests, as Mr. Gentry proves that the goods would in the regular course, if no detention had occurred, have been realized by the end of* March, 1847; *and Mr. Kerford, in his account, shows that the above duty was levied subsequent to January,* 1847.)

Having gone fully into the calculation, believes the loss from fall in price of goods and forced sales to be $95,000

Mules, oxen, &c., lost . . .	17,75
Additional wages to men and to Mr. Gentry . .	13,000
	$125,750

and is fully persuaded that the loss in consequence of detention is not less than

(*Mr. Kerford estimates the loss by depreciation in price and forced sales, at* $125,000, *or* $30,000 *more than Mr. Gentry's estimate.*)

Periods of detention stated by Mr. Kerford:

10 days, several days, 2 months, several weeks—total, three months and a half.

$180,000, with interest from the end of March, 1847, when the goods would have been realized.

(*But Mr. Gentry must have been absent from Chihuahua the most of* 1846, *and could have no personal knowledge of the state of trade during the time in question.*)

Has been in the Santa Fé trade from 1839 to 1848. 500 to 700 wagon loads go annually by this route, of which only 100 to 150 are consumed in Santa Fé, and the adjoining districts. The term Santa Fé trade is used in a wide sense. Certificates for obtaining drawback were sent from Santa Fé, although almost all the goods went on to Chihuahua.

Periods of detention stated by Mr. Gentry:

11 days, 6 weeks, 6 weeks; total, three-and-a-half to four months.

On a review of the whole circumstances, the claimants' interests appear to have been affected as follows:

The value of the 986 packages of goods sent from England was, as per invoice, exclusively of charges, £14,210 16*s.* 11*d.*, or about $70,000. The Santa Fé trade was stopped when the goods arrived, and, as the owners would have been exposed to immense loss thereby, they petitioned The United States' Treasury to permit, in this instance, a devia-

tion from the circular of 11th June, 1846, prohibiting the export in the way desired.

The Treasury accordingly permitted the export with benefit of drawback, "without giving rise to any inferences as regards the condition of Santa Fé, or to act as a precedent in other cases;" and on receipt of the Consular certificate of the arrival of the goods at Santa Fé, the drawback, amounting to £53,108·94, was repaid to the claimants.

After various delays the goods (or, rather, the greater part of them, a portion having been sold, as is alleged, to purchase supplies and food), arrived at Chihuahua, in February, 1847, where they were sold for £260,000, a sum which, after the most liberal allowance for expences, must have left a handsome profit on the enterprize. So that, by this act of grace and courtesy on the part of The United States' Government, the claimants were saved from immense loss, and enabled to prosecute their adventure to a successful issue. They received back a sum of £53,108·94 for duties, and the mules, oxen, &c. provided, were rendered available, which otherwise would have been of but little value. The claim, therefore, is not for actual loss sustained, but for alleged diminution of profits arising out of the detention of the caravan in the course of the journey.

Much stress has been laid on the part of the claimants on the permission to export under drawback, incorrectly and improperly termed a licence. But there is no ground for the belief that anything more was intended than a permission to the claimants to undertake an adventure which was at the time legally prohibited. It cannot be imagined that The United States' Government had the slightest intention to confer a privilege which might interfere materially with their operations against the enemy; indeed, the reservation expressly made in granting the petition was evidently intended to exonerate The United States' Government from all responsibility, and to intimate to the petitioners that they must take their chance in pursuing the adventure.

They knew that war was being carried on, and must

also have been prepared for difficulties and hindrances incident to a disturbed state of affairs. The permission was not a privilege granted to them as British subjects, but was equally granted to other traders, citizens of The United States, who were placed in similar circumstances. It was a mere matter of favour on the part of The United States' Government to allow the trade to be carried on at all by claimants and other traders, and they embarked in it with a knowledge of the disturbed state of the country to which the adventurers were bound.

Much stress has been laid on the case of *Harmony*, as affording a precedent in support of Messrs. Kerford's claim; but the two cases differ essentially, and the opinion of the Court, delivered by Mr. Chief Justice Taney (*Mitchell* v. *Harmony*) is clearly adverse to Messrs. Kerford.

Harmony's Case.

1. The jury found for Harmony, on the grounds that he was not trading with the enemy: that his goods and property were seized, and part of them converted to the public use, without the plea of urgent or immediate necessity; and that Harmony never resumed possession after the seizure.

2. The property of Harmony was left in Chihuahua when the place was evacuated by the Americans (the goods having been unsaleable during their occupation), and was confiscated by the Mexicans on their return, and wholly lost to Harmony.

3. The seizure in this case took place at San Eleasario, in the province of Chihuahua, at which place Harmony, having determined to proceed no further, was compelled by Colonel Mitchell to remain with and accompany the troops.

Kerford's Case.

1. In the case of Messrs. Kerford there was no seizure, nor has any been alleged: his avowed object was to go for-

ward for the purpose of trading with the enemy, and he continued all along in possession of his goods.

2. The property of Messrs. Kerford was safely conducted to Chihuahua, and realized a very large sum, $260,000 by claimant's statement.

3. The complaint of Messrs. Kerford is not that they were not allowed to leave the army and proceed no further, but that they were not allowed to precede the army of The United States to the place which they were going to attack.

The question, therefore, in this case, resolves itself into one of detention. The Commander of The United States' forces had undertaken an expedition against the city to which Messrs. Kerford's caravan was bound: the arrival of the caravan would certainly have put the inhabitants of Chihuahua in a more favourable position for frustrating the expedition; indeed, it is admitted in the plea put in on behalf of Messrs. Kerford, that the arrival of the caravan was anxiously expected on account of the duties payable to the Governor of the place. The enemy would have derived a further advantage in obtaining information respecting the strength and resources of the invading force, and part of the men employed to conduct the caravan were Mexicans. These circumstances are, surely, a sufficient justification of the control exercised by Calonel Doniphan over the movements of Messrs. Kerford's caravan. Similar control was exercised over other traders, citizens of The United States, without complaint on their part. It is contended that, as neutrals, Messrs. Kerford stood in a better position, and could not properly be impeded in carrying on their trade; but (admitting for argument's sake that they were neutrals), this does not alter the case. It must be remembered that the trade in question had been stopped, and was only allowed under special circumstances, and with a special reserve. It was not an open road on which a friendly power had a right to travel freely and without question. The case of Harmony has been relied on as a pecedent, but the following passage

from the "opinion of the Court," delivered by Mr. Chief Justice Taney, is conclusive in favour of the right of detention; for he says that, "*up to the period at which the trespass is alleged to have been committed at San Eleasario, in the province of Chihuahua, it is conceded that no control was exercised over the property of the plaintiff that is not perfectly justifiable in a state of war.*"

This seizure took place on 10th of February, 1847, at which time Harmony's property must have been detained for a longer period than that of Messrs. Kerford.

On the whole review of the case it appears,

1. That no engagement was entered into by The United States' Government which can be construed into a licence to trade with the enemy, or to pursue a course calculated to interfere with the military operations of The United States' forces.

2. That the detention by which the alleged losses were occasioned arose out of the state of war, and was a contingency incident to any trading adventure undertaken under such circumstances.

And that there is, therefore, no fair claim for compensation against the Government of The United States.

JOSHUA BATES, *Umpire.*

The "Confidence."

London, 13th January, 1855.

The umpire reports that this claim arises from the running down by the "Constitution," American frigate, on the 1st December, 1851, in the Straits of Gibraltar, off Cape Spartel, of the brig "Confidence," coal laden, and having consulted with several experienced navigators, to whom the evidence in the case was exhibited, they all agree with me, that while all praise is due to the officers of the "Constitution" for their exertions in saving the lives of the crew and their kindness to them afterwards, that the "Constitution" was in fault.

I therefore award to the owners of the "Confidence," or their legal representatives, the sum of two thousand and fifty-five pounds, or at 484, nine thousand nine hundred and forty-six dollars twenty cents, on the 15th January, 1855.

JOSHUA BATES, *Umpire.*

The "Director."

London, 13*th January*, 1855.

The umpire reports that the "Director" according to the testimony of several witnesses appears to have been captured near Chattican, on the Northern shore of the Island of Cape Breton: no cause for the seizure is assigned by the witnesses on behalf of the Claimants, who testify that the "Director" was farther from the shore than the rest of the fleet, but the masters of the other vessels state that their attention was particularly called to the "Director" without giving any reason why their attention was so directed. One of the witnesses states that Captain Stevens who captured the vessel said, he seized her as a smuggler.

It appears by the deposition of the cook who with the captain remained on board the schooner, that she was taken to Arichat, where, after three days he and the captain were ordered on shore, and here the evidence ends. There is no account of the fate of the schooner, whether she was condemned or cleared; or if condemned, for what reason. It would appear improbable that she was condemned for being too near the shore, as the rest of the fleet were nearer and were not molested. I consider the evidence in this case insufficient to establish a claim before this Commission.

JOSHUA BATES, *Umpire.*

Mr. Alexander McLeod.

Mr. Hornby, British Commissioner:

In the course of the Canadian insurrection, in the year 1837, it was deemed advisable by the military officer in command of Her Majesty's forces on the Niagara frontier, to capture a vessel called the "Caroline," which was being used by the rebels for the conveyance of munitions of war from the American shore to Navy Island, from which an invasion of the British territory was in preparation. On the night of the 29th September, Commander Drew proceeded, with an armed force, from the Canadian shore to Schlosser, in The United States, where the "Caroline" was lying, and, having overcome the crew of that vessel, one of whom was killed in the encounter, seized her, set her on fire, and allowed her to drift over the Falls of Niagara.

The circumstances of this capture having been reported to the Lieutenant-Governor, his Excellency expressed his unqualified approbation of the proceeding, and desired the Commander-in-chief to convey to Captain Drew, and those under his command, his thanks for the important* service they had rendered the province.

The destruction of the "Caroline" was complained of by The United States' Government, as an unjustifiable violation of its territory, and was defended by Her Majesty's Government, as a necessary act of self-defence. In the course of the correspondence which passed between the two Governments on this subject, Her Majesty's Minister at Washington, in an official note† of the 6th February, 1838, communicated to The United States' Government the formal avowal and approval of the proceeding by Sir Francis Head

* Mr. Strachan to Colonel M'Nab, 1st January, 1838.
† Mr. Fox to Viscount Palmerston, March 28, 1841.

and Sir Allan M'Nab, the superior authorities, under whose orders the persons in the public service of Her Majesty, employed in the attack on the "Caroline," were acting.

On the 12th November, 1839, Mr. Alexander M'Leod, a British subject, and late Deputy-Sheriff of the Niagara district in Upper Canada, was arrested at Lewiston, in the State of New York, on a charge of murder and arson, as having been engaged in the capture and destruction of the "Caroline." After a lengthened examination before a magistrate, he was, on the 18th November, committed to Lockport gaol, to await his trial at the assizes in the ensuing February. Mr. M'Leod immediately informed the Canadian authorities of his position, stating that he was not concerned in the destruction of the "Caroline," and requesting the interference of the Government on his behalf.*

On the 24th of November Sir George Arthur transmitted a copy of Mr. M'Leod's communication to Her Majesty's Minister at Washington.†

On the 13th of December, Mr. Fox addressed a note‡ to Mr. Forsyth, The United States' Secretary of State, informing him of the proceedings against Mr. M'Leod. In that note, Mr. Fox called upon The United States' Government to take prompt and effectual steps for the liberation of Mr. M'Leod. "It is well known," he wrote, "that the destruction of the steam-boat "Caroline" was a public act of persons in Her Majesty's service, obeying the order of their superior authorities. That act, therefore, according to the usages of nations, can only be the subject of discussion between the two national Governments, and it cannot justly be made the ground of legal proceedings in The United States against the individuals concerned, who were bound to obey the authorities appointed by their own Government."

In reply to Mr. Fox's note, Mr. Forsyth, on the 26th December,§ stated that the President found himself unable to

* Mr. M'Leod to Mr. Harrison, November 19, 1840.

† Sir George Arthur to Mr. Fox, 24th November, 1840.

‡ Mr. Fox to Mr. Forsyth, 13th December, 1840.

§ Mr. Forsyth to Mr. Fox, 26th December, 1840.

recognize the validity of the demand made for Mr. M'Leod's release. The grounds of this determination were thus stated by Mr. Forsyth :—

"The jurisdiction of the several States which constitute the Union is, within its appropriate sphere, perfectly independent of the Federal Government. The offence with which Mr. M'Leod is charged was committed within the territory and against the laws and citizens of the State of New York, and is one that comes clearly within the competency of her tribunals. It does not, therefore, present an occasion where, under the constitution and laws of the Union, the interposition called for would be proper, or for which a warrant can be found in the powers with which the Federal Executive is invested; nor would the circumstances to which you have referred, or the reasons you have urged, justify the exertion of such a power, if it existed."

Mr. Forsyth then proceeded to argue, that, although the avowal of the destruction of the "Caroline," by her Majesty's Government, might be in itself a ground of complaint with The United States' Government, it could not, by any principle of international law, entitle those persons to impunity before The United States' legal tribunals, who, having been engaged in the destruction, should afterwards come voluntarily within their jurisdiction.

In a note, dated 9th February, 1841, Lord Palmerston informed Mr. Fox* that her Majesty's Government entirely approved of the course he had pursued in demanding that prompt and effectual steps should be taken for the liberation of Mr. M'Leod, and of the language which he had held on the occasion.

His Lordship instructed Mr. Fox to make this known to Mr. Forsyth, and again to address a note to him, formally repeating, in the name of the British Government, a demand for the immediate release of Mr. M'Leod, and to say, that the grounds upon which her Majesty's Government made this demand upon the Government of The United States were, that the transaction, on account of which Mr. M'Leod had

* Viscount Palmerston to Mr. Fox, 9th February, 1841.

been arrested, was a transaction of a public character, planned and executed by persons duly empowered by her Majesty's colonial authority to take any steps and to do any acts which might be necessary for the defence of her Majesty's territories and for the protection of her Majesty's subjects, and that consequently those subjects of her Majesty who engaged in that transaction were performing an act of public duty, for which they could not be made personally and individually answerable to the laws and tribunals of any foreign country.

His lordship added that her Majesty's Government could not, for a moment, admit the validity of the doctrine set up by Mr. Forsyth, that the Federal Government of The United States had no power to interfere in the matter, and that the decision thereof must rest entirely and solely with the State of New York.

In accordance with the views expressed in Mr. Forsyth's letter of the 26th December, 1840, The United States' Government refused to take any step to procure the liberation of Mr. M'Leod, and he was detained in prison at Lockport, to await his trial.

In March, 1841, a change of Administration took place at Washington. Mr. Fox immediately presented to Mr. Webster, the new Secretary of State, an official note, demanding again formally the immediate release of Mr. M'Leod.*

In this note, Mr. Fox, in pursuance of the instructions received from Viscount Palmerston, declared that her Majesty's Government could not for a moment admit the validity of the doctrine advanced by Mr. Forsyth, that the Federal Government of The United States had no power to interfere in the matter, and that the decision thereof must rest solely and entirely with the State of New York.

Upon this point Mr. Fox remarked:—"With the particulars of the internal compact which may exist between the several States that compose the Union, foreign powers have nothing to do; the relations of foreign powers are with the aggregate Union. That Union is, to them, represented by

* Mr. Fox to Mr. Webster, March, 1841.

the Federal Government; and of that Union the Federal Government is to them the only organ; therefore, when a foreign power has redress to demand for a wrong done to it by any State of the Union, it is to the Federal Government, and not to the separate State, that such power must look for redress for that wrong; and such power cannot admit the plea that the separate State is an independent body over which the Federal Government has no control. It is obvious that such a doctrine, if admitted, would at once go to a dissolution of the Union, so far as its relations with foreign powers are concerned, and that foreign powers, in such cases instead of accrediting diplomatic agents to the Federal Government, would send such agents, not to that Government, but to the Government of each separate State; and would make their relations to peace and war with each State depend upon the result of their separate intercourse with such State, without reference to the relations they might have with the next."

The New Administration of Washington took a different view of the public law applicable to Mr. M'Leod's case to that which was expressed in Mr. Forsyth's note of the 26th December, 1840, and Mr. Webster, on the receipt of Mr. Fox's letter of the 12th March, communicated to the Attorney-General of The United States the President's instructions* as to the part he was to take on behalf of his Government, with reference to Mr. M'Leod's trial. In those instructions Mr. Webster thus laid down the principle upon which his Government was prepared to act:—

"That an individual forming part of a public force, and acting under the authority of his Government, is not to be held answerable as a private trespasser or malefactor, is a principle of public law sanctioned by the usages of all civilized nations, and which the Government of The United States has no inclination to dispute."

The Attorney-General was therefore instructed to proceed to Lockport, or wherever else the trial of Mr. M'Leod might

* Instructions from the President to the Hon. S. Credenden, Attorney-General of The United States, March 15, 1841.

take place, and to furnish his counsel with authentic evidence of the recognition by the British Government of the destruction of the "Caroline" as an act of public force done by national authority. The Attorney-General was also instructed to see that Mr. M'Leod had skilful and eminent counsel, and he was directed, without acting as counsel himself, to signify to Mr. M'Leod and his counsel that it was the wish of The United States' Government that, in case the defence should be overruled, proper steps should be taken immediately for removing the cause, by writ of error, to the Supreme Court of The United States. Beyond this, Mr. Webster stated that the Federal Government was unable to interfere on Mr. M'Leod's behalf. "You are well aware," he writes to the Attorney-General, "that the President has no power to arrest the proceedings of the Civil and Criminal Courts of the State of New York. If this indictment were pending in one of the Courts of The United States, *I am directed to say that the President, upon the receipt of Mr. Fox's last communication, would have immediately directed a* nolle prosequi *to be entered.* Whether in this case the Governor of New York have that power, or if he have, whether he would feel it his duty to exercise it, are points upon which we are not informed."

On the 24th April 1841, Mr. Webster officially communicated to Mr. Fox, a copy* of the instructions which he had given to the Attorney-General, but while admitting that the adopting of the destruction of the "Caroline" by her Majesty's Government, discharged Mr. M'Leod, from all personal responsibility on that account, he assumed that Mr. Fox had only required that he should be released by judicial process.

"The President adopts the conclusion, that nothing more than this could have been intended to be expressed from the consideration that Her Majesty's Government must be fully aware that in The United States, as in England, persons confined under judicial process can be released from that confinement only by judicial process. In neither country, as the

* Mr. Webster to Mr. Fox, 24th April, 1841.

Undersigned supposes, can the arm of the Executive power interfere, directly or forcibly, to release or deliver the prisoner. His discharge must be sought in a manner conformable to the principles of law and the proceedings of courts of judicature. If an indictment like that which has been found against Alexander M'Leod, and under circumstances like those which belong to his case, were pending against an individual in one of the Courts of England, there is no doubt that the law officer of the Crown might enter a *nolle prosequi*, or that the prisoner might cause himself to be brought up on *habeas corpus* and discharged, if his ground of discharge should be adjudged sufficient, or that he might prove the same facts, and insist on the same defence or exemption on his trial.

"All these are legal modes of proceeding well known to the law and practice of both countries, but the Undersigned does not suppose that if such a case were to arise in England, the power of the Executive Government could be exerted in any more direct manner. Even in the case of Ambassadors and other public ministers, whose right to exemption from arrest is personal, requiring no fact to be ascertained, but the mere fact of diplomatic character, and to arrest whom is sometimes made a highly penal offence, if the arrest be actually made, it must be discharged by application to the courts of law.

"It is understood that Alexander M'Leod is holden as well on civil as on criminal process, for acts alleged to have been done by him in the attack on the 'Caroline,' and his defence or ground of acquittal must be the same in both cases. And this strongly illustrates, as the Undersigned conceives, the propriety of the foregoing observations, since it is quite clear that the Executive Government cannot interfere to arrest a civil suit between private parties in any stage of its progress, but that such suit must go on to its regular termination.

"If, therefore, any course different from such as have been now mentioned was in contemplation of her Majesty's Government, something would seem to have been expected

from the Government of The United States as little conformable to the laws and usages of the English Government as to those of The United States, and to which this Government cannot accede."

Upon this part of Mr. Webster's note, Mr. Fox observes, in a letter to Lord Palmerston of the 28th April, 1841*:—"It is evident that although The United States' Government are now prepared to admit the principle insisted upon by Great Britain, that M'Leod must not be proceeded against judicially in The United States for a public act, authorized by the officers of his Government, yet they either cannot, or will not, or dare not, interfere officially as a Government to prevent it. They desire to wind their way out of the difficulty by legal process, counteracting the wrongful legal process by which the difficulty has been raised. The basis of Mr. Webster's reasoning seems to be this, that although M'Leod has been unjustly proceeded against, yet, as the wrong has been done judicially, it can only be undone judicially. *I have several times clearly stated to Mr. Webster* that I cannot pretend to determine how far her Majesty's Government will consider the course which is now being pursued as a satisfaction to the demand for Mr. M'Leod's release, for that what Great Britain demands is not that Mr. M'Leod should be acquitted, but that Mr. M'Leod should not be tried. Mr. Webster contends, that if the case is dismissed by the court upon the plea proposed, without going before a jury, the demand of Great Britain is sufficiently complied with. I so far agree in this doctrine as to allow that *immediate cause of war is done away with*, but the *outrage* will nevertheless remain *insufficiently atoned for.*"

Upon the 17th May, 1841, Mr. M'Leod's case was brought before the Supreme Court of New York,† when the question, whether the adoption by her Majesty's Government of the act with which he was charged as a crime, entitled him to his discharge from further prosecution, was elabor-

* Mr. Fox to Viscount Palmerston, 28th April, 1841.

† See Report.

ately argued. After a lengthened consideration, the Court decided* that Mr. M'Leod was not, under the circumstances, entitled to be discharged by the Court, and that he must be remanded to take his trial in the ordinary forms of law. Mr. Justice Cowen, in delivering judgment, observed—that whether the Executive of the Nation (supposing the case to belong to the National Court), or the Executive of the State of New York, might not pardon the prisoner, or direct a *nolle prosequi* to be entered, where considerations with which the Court had nothing to do.

No further step was at any time taken, either by the Executive of The United States or that of the State of New York, to procure Mr. M'Leod's release by *nolle prosequi* or otherwise, and he consequently remained in prison until the month of October, 1841, when he was brought up for trial, and, after an investigation of six days' duration, was acquitted upon proof that he was not present at the destruction of the "Caroline." Mr. M'Leod was immediately discharged from all other proceedings pending against him, and was released from custody, after having suffered twelve months' incarceration.

In the despatch from Mr. Fox to the Earl of Aberdeen,† communicating the result of the trial, Mr. Fox observes:—"The arduous question of the national outrage committed by the Americans, in the detention and trial of M'Leod, will now remain to be settled, and security to be provided against the commission of like acts of atrocity for the future." And in a subsequent letter of the 28th October, Mr. Fox writes:‡ "The issue of the trial, as it has now ended, leaves the question of public law untouched. The enormous national outrage committed by a part of the American people in bringing M'Leod to trial in defiance of their own Government, as well as in defiance of Great Britain, remains to be accounted for."

In a despatch, dated November 18, 1841,§ from the Earl

* See Judgment of the Supreme Court, delivered by Mr. Justice Cowen.

† Mr. Fox to Lord Aberdeen, October 13, 1841.

‡ Mr. Fox to the Earl of Aberdeen, October 28, 1841.

* The Earl of Aberdeen to Mr. Fox, November 18, 1841.

of Aberdeen to Mr. Fox, after adverting to the expectations entertained by Her Majesty's Government that they would receive the advantage of Mr. Fox's opinion respecting the specific measures which it might be expedient to adopt, in order to obtain a speedy reparation from the American Government, his Lordship continues: "Her Majesty's Government are fully alive to the necessity of such measures being adopted by the Legislature of The United States, as shall correct the admitted anomaly in their constitution, *and as may also indemnify the individual who has suffered great injury in consequence of this want of authority on the part of the Federal Government.* At the same time, we should feel most reluctant to embarrass the President by any *premature* demand, when we have great reason to trust that everything we desire may be the spontaneous act of his own wisdom and justice. I have, therefore, to instruct you to communicate confidentially with Mr. Webster upon this subject. You will represent to him, on the most friendly terms, the expectations of Her Majesty's Government, and our desire to take no step which might in any manner impede rather than facilitate the course that we are persuaded he is himself disposed to adopt." . . . . "We have promptly repaired the injury committed by the seizure of an American citizen beyond the Canadian frontier, without waiting for any official application for his release. In short, we have been careful to do nothing which could augment the difficulty of the Federal Government. We have relied upon its justice, and we confidently trust that in this matter it will act from a sense of what is due to its own character, and to the rights of an allied and friendly State."

The receipt of this despatch was acknowledged by Mr. Fox, in a note dated December 10, 1841,* and its contents were, it is to be presumed, communicated to Mr. Webster.

No indemnification has ever been made to Mr. M'Leod by The United States' Government, and he now prefers his claim before this Commission, praying that we will grant him

* Mr. Fox to Lord Aberdeen, December 10, 1841.

compensation for the sufferings and losses he has sustained, and the expenses to which he has been put. That he must have sustained great personal suffering, as well as considerable loss, is frankly admitted by the learned Agent of The United States and by my colleague. I shall not, therefore, further allude to this part of his case. The answer, however, which has been offered to this claim, is that it has been already settled by the two Governments, and this inference is sought to be drawn from the correspondence before us—the fact that the claim of the owners of the "Caroline" is not presented by The United States' Government for our consideration, and that these cases of M'Leod and the "Caroline," together with that arising out of the death of "Durfee," were all arranged at the same time in the course of the year 1841.

With respect to this alleged settlement, I have purposely alluded to the whole of the correspondence on the subject, and it seems clear to me from the last of the letters, that the British Government never did consider the personal Claim of M'Leod either satisfied or settled. The United States, it is true, during Mr. Webster's administration, disavowed the acts of the State of New York, and this disavowal reduced those acts to simple wrongs for which The United States, as the representative of the State sovereignties, and charged with the conduct of foreign relations, are, in my opinion, bound to render an indemnity. The disavowal removed the proximate cause of war, but it in no way relieved M'Leod; for, notwithstanding it, he might have been found guilty and hanged, although the want of constitutional power to interfere directly might have led to serious consequences, and justified retaliatory measures on the part of Great Britain. Indeed it is impossible not to see that if the mere act of disavowal is, as against the British Government and the individual suffering, to be considered in the light of a relief from all responsibility on the part of The United States, it would have equally operated in that way had the State of New York hanged M'Leod—a conclusion too absurd for serious consideration. M'Leod was indicted for a crime against the Commonwealth

—that Commonwealth representing the nationality of the Federal and State sovereignty—the act of arrest and committal therefore may be considered as the act of The United States; but if even it is not to be so considered, The United States being indisputably* responsible for the acts of each sovereign State, so far as those acts affect foreign States, it follows, as an irresistible consequence, that having disavowed as against the foreign State an act of hostility sufficient in itself to justify war, it is bound, that act having worked a grievous injury to an individual, to provide him a full indemnity.

In the course of the argument, however, it was urged that Great Britain having taken up the arrest and trial of M'Leod as a national wrong, the private claim to indemnity for the personal injury became merged and lost in the political question. If this were so, then nations might on every occasion avoid the obligation of making compensation to an individual for an injury done to him, whenever the circumstances of that injury involved a breach of international law; and under this rule the most important claims before this Convention must have been dismissed from consideration as wholly without the jurisdiction conferred on the Commissioners by the Convention.

But in the case before us, the international question arising out of the arrest of M'Leod had no personal relation to him whatever. The arrest being made on the assumption of his guilt, Great Britain took this ground—"You, The United States, have no right to arrest, detain, or subject to trial an individual for an act which, if not justifiable, is an act of hostility, performed by our orders"—and The United States, through Mr. Webster, very properly admitted this breach of the rights of nations. This admission then settled, to a certain extent, the international question;

* The acts of the constituted authorities of a State are the acts of the State. This decision is, then, the act of the State of New York. For the acts of States, as well as individuals, both being constituents of the National Government, so far forth as they are in violation of the law of nations, and affect other nations, The United States are responsible."—14 Peters, 573.

for the Government of Great Britain, perceiving the inability of the Federal Government, from a constitutional defect, to peremptorily interfere and release M'Leod, and having received the assurance that the defect should be remedied,—M'Leod being fortunately in the meantime released by the verdict of a jury, did not press for any further apology or concession; but there still remained the obligation on the part of The United States to repair the personal injury sustained by the individual,—in the same way as there would have remained the undisputed obligation, had M'Leod been found guilty, to have protected him from the sentence of the local tribunal. It is impossible, therefore, to contend, for a moment, that the accidental circumstance of the release of M'Leod by a jury, wholly irrespective of the action of the Federal Government, has absolved the obligation of the latter to make him compensation, when, had that jury found him guilty, the obligation to protection by the whole power of the Executive would have instantly arisen. If it was a settlement for one purpose, it was clearly a settlement for every other; and that which proves it to have been no settlement of M'Leod's private right to compensation at the hands of The United States' Government, is the fact, that had he been convicted and sentenced to death, no one could have pretended that Great Britain would nevertheless have been bound to consider the whole affair arranged.

Passing then from the question of whether M'Leod's claim is, or is not, to be considered as settled, I shall now briefly allude to the "Caroline" and "the death of Durfee," and the argument which has been raised with reference to them. It is said that the claim of the owners of the "Caroline" and that resulting from the "death of Durfee" were settled at the same time, and the inference intended to be raised is, that the two latter were "set off" against the former. The essential difference, however, between theposition of these claims and that of M'Leod, seems to have been entirely overlooked by the learned Agent of the United States. The British Government justified the former; while The United States' Government admitted the wrong done in the latter. It is true that

the British Government apologized for the necessary invasion of the territory of The United States; but as respects the claim of the Owners, if ever made, Mr. Webster is an authority which I presume neither the learned Agent or my colleague are likely to dispute; he thus disposes of it in his speech in the Senate of The United States, April, 1846:—"As to the mere destruction of the vessel," said Mr. Webster, "if perpetrated on the Canadian side it would have been quite justifiable. The persons engaged in the vessel were, it is to be remembered, violating the laws of their own country, as well as the laws of nations; some of them suffered for that offence, and I wish all had suffered."

Mr. Allen, interrupting Mr. Webster, here desired to know "where the proof was that the 'Caroline' was so engaged"—asking also, "if there were any record of the fact." To these questions Mr. Webster replied, "Yes, there is proof—abunbundant proof. The fact that the vessel was so engaged was, I believe, pretty well proved on the trial and conviction of Van Rensselaer. But, besides this, there is abundant proof in the Department of State, in the evidence taken in Canada by the authorities there, and sent to Great Britain, and which would be confirmed by any body who lived anywhere from Buffalo down to Schlosser." And Mr. Adams of Massachussets, and Mr. Everett of Vermont, in the House of Representatives, on the 3rd and 4th of September, 1841, made similar statements.

This then is, I think, sufficiently strong evidence to show that in the opinion of the Government of The United States no just ground of complaint existed against Great Britain on the score of the destruction of the "Caroline," or of the death of "Durfee"; and I am wholly at a loss to conceive even the propriety of the suggestion, that all these claims were settled at the same time, or the claims of the individuals injured set off one against the other by agreement between the two Governments.

The real position of these cases then, at the time when the correspondence between the two Governments on this subject ceased, was this.

The attack on the "Caroline" was justifiable, but it being made on the territory of The United States, the British Government apologized for this apparent act of hostility.

The arrest, detention, and trial of M'Leod, whether guilty or not, was, however, unjustifiable, and admitted to be so by The United States' Government. From a defect, however, in the Constitution, the Federal Government was unable to perform the obligation it owed to foreign nations, and was compelledto allow the law to take its course. Fortunately the acquittal of M'Leod deprived the political question of its chief interest, and the prevention of a similar proceeding in future by the action of Congress on the subject, together with the disavowal by Mr. Webster, settled the international grievance; but the private injury to M'Leod remained unredressed, and The United States' Government is, therefore, in my opinion, liable upon every principle of justice to make him such redress as it has the power to render.

MR. UPHAM, United States' Commissioner:

THE claim of Alexander M'Leod, which has been presented for our consideration, renders it necessary to recite briefly the details of border collisions between The United States and the Canadas, which occurred some seventeen years since, and which are set forth in the documents presented in this case.

On the 29th of December, 1837, the steamer "Caroline," belonging to a citizen of The United States, was lying in the Niagara river, along side the wharf at Schlosser, in the State of New York, having on board a number of American citizens.

A civil commotion at the time prevailed in Upper Canada, and it was alleged that the "Caroline" had been used to carry arms and munitions of war from the shores of the State of New York to an insurrectionary party on Navy Island, then in arms against the Government of that province.

While the "Caroline" was thus within the jurisdiction of the State of New York, a party of her Britannic Majesty's subjects left the shore of Canada, came within the limits of the State of New York, seized the "Caroline," and destroyed her. During the collision, arising from the seizure, Amos Durfee, a citizen of The United States, was killed, and was found dead on the wharf; and it was supposed the lives of other citizens were lost on board the steamer.

Complaint was early made to Great Britain of the public wrong done to The United States by this invasion and violation of her rights of territory, and the injuries there committed, but no satisfaction or apology had been made for such wrong for a period of three years after the event, when, in November, 1840, Alexander M'Leod, who was a citizen of Great Britain and a resident of Upper Canada, came to Lewiston, in the State of New York, and was there arrested on the charge of having been concerned in the seizure of the

steamer "Caroline," and the wrongs connected with it. On examination, he was committed to the gaol in Niagara county; and in February, 1841, the grand jury of that county found a bill of indictment against him for the murder of Durfee. The case was removed to the Supreme Court for trial, and was afterwards transferred to another county to avoid the local excitement existing on the Niagara border.

The arrest of M'Leod revived at once the consideration of the whole subject of the border difficulties. In March, 1841, Mr. Fox, then Minister of Great Britain to The United States, demanded, formally, in the name of the British Government, the immediate release of M'Leod, and set forth the grounds upon which this demand was made, alleging "that the transaction, on account of which M'Leod was arrested, was a transaction of a public character, planned and executed by persons duly empowered by Her Majesty's colonial authorities to take any steps and to do any acts which might be necessary for the defence of Her Majesty's subjects, and that they were not personally and individually answerable to the laws and tribunals of any foreign country." It was thus contended that all liability of M'Leod for the acts charged against him was merged in the national character given to the transaction by the British Government.

Mr. Webster, in reply, on the 24th of April, 1841, stated "that the communication of the act being formally made that the destruction of the "Caroline" was an act of public force by the British authorities, the case had assumed a decided aspect," and measures would be taken accordingly.

The United States' Government accepted at once the issue tendered in this form, and insisted on satisfaction or apology for the violation of its rights of territory in the seizure of the "Caroline;" at the same time the Government took immediate measures to communicate, in a proper manner, to the judicial authorities, the evidence of the international defence thus set up by the British Government, that it might avail to the benefit of M'Leod.

The counsel for M'Leod sued out a writ of *habeas corpus*, returnable before the Supreme Court of *New York*, and

claimed his discharge on the ground thus interposed. It was holden by the Court, however, as is stated by Mr. Webster in his letter to Lord Ashburton of August 6, 1842, "that, on this application, embarrassed as it would appear by technical difficulties, M'Leod could not be released." Further hearing was proposed on this subject, by a transfer of the case to The United States' Court for the determination of this question, but M'Leod objected to the delay necessarily attendant on such a proceeding, and requested, in writing, a trial by jury, a copy of which request was communicated to the British Government. Shortly afterwards the discharge of M'Leod was effected by the decision of a jury, and "the further prosecution of the legal question," as Mr. Webster says, "was then rendered unnecessary."

Had the verdict of the jury been otherwise, M'Leod had reserved to himself the right to a reconsideration of the decision of the Supreme Court of New York, on the international defence interposed by him.

Mr. Spencer, the Attorney of M'Leod, states in his argument before the jury: "I have taken the precaution to *secure the right* which will enable me to review the decision of the Supreme Court elsewhere, so that, in the event of M'Leod's conviction, if the Supreme Court have been mistaken, if that decision should not be in accordance with the law of the land, it may be reversed, and that established which I believe to be the law of the land, namely:—that where there was such a war being carried on between the British Government and those who waged it on our side of the waters, the British Government might properly exert its powers to put down that war, and those who acted in obedience to the orders of that Government discharged their duty as faithful subjects and citizens, and are not murderers."—(*Gould's trial of M'Leod, p.* 151).

Such is a brief recital of the facts relative to this matter, and of the respective issues raised by the two Governments on the subject.

The difficulties thus existing were early made the subject of further correspondence, and a final adjustment in regard to

them was had between the Governments. It becomes necessary, then, to examine the character of this adjustment, and to determine the effect of such settlement on the claim before us.

Two questions arise in the case:

I. Whether the settlement made by the Government precludes our jurisdiction over the claim now presented.

II. Whether, independently of such exception, the facts show a ground of claim against The United States.

The Convention provides that we are to pass upon the unsettled claims of citizens or subjects of either Government against the other, and we are to pass "only on such claims as shall be presented by the Governments," and are to be confined "to such evidence and information as shall be furnished by or on their behalf." No claims can be sustained before us except those which the Governments can rightly prefer for our consideration. With matters settled and adjusted between them, we have nothing to do.

A settlement by the Governments of the ground of international controversy between them, *ipso facto* settles any claims of individuals arising under such controversies against the Government of the other country, unless they are specially excepted; as each Government by so doing assumes, as principal, the adjustment of the claims of its own citizens, and becomes itself solely responsible for them.

The controversies to which I have referred consisted of two grounds of complaint: the delay in the liberation of M'Leod on the one hand; and the violation of the American rights of territory in the seizure of the "Caroline" on the other. These questions passed under the full consideration and revision of the two Governments, in 1842, represented by Lord Ashburton, Ambassador Extraordinary and Minister Plenipotentiary, on the part of Great Britain, and Mr. Webster, then Secretary of State, on the part of The United States.

The result of their conference I regard as a full and final settlement of these matters in controversy. In the closing letter of Lord Ashburton on this subject, he says, "After

looking though the voluminous correspondence concerning these transactions (that is, the difficulty with M'Leord), I am bound to admit there appears no indisposition with any of the authorities of the Federal Government, under its several administrations, to do justice in this respect in as far as their means and powers would allow."

He makes no complaint of want of diligence or promptness on the part of The United States' Government, but says, "Owing to a conflict of laws, difficulties have intervened, much to the regret of the American authorities, in giving practical effect to the principles avowed by them; and for these difficulties some remedy has been by all desired." He then says: "I trust you will excuse my addressing to you the inquiry, whether the Government of The United States is now in a condition to secure, in effect and in practice, the principle, which has never been denied in argument, that individuals, acting under legitimate authority, are not personally responsible for executing the orders of their Government? That the power, when it exists, will be used on every fit occasion, I am well assured."

Lord Ashburton thus rested his claim, and in the same letter and spirit tendered an apology for the violation of The United States' right of territory in the seizure of the "Caroline," "which transactions," he says, "are connected with each other."

His lordship then does not wait for the reply of Mr. Webster as to the adoption of a provision for more prompt means of redress, in cases like M'Leod's, but, reposing confidence in advance in the proper action of the American Government, closes his letter by saying, in reference to both these subjects, of controversy: "I trust, sir, I may now be permitted to hope that all feelings of resentment and ill-will resulting from these truly unfortunate events, may be *buried in oblivion*, and that they may be succeeded by those of harmony and friendship, which it is certainly the interest, and I also believe the inclination, of all to promote.

Mr. Webster, in his reply to the subjects of this letter, adverting to the matter of M'Leod, stated the reasons why

delay had occurred in his case, and that "in regular constitutional Governments, persons arrested on charges of high crimes can only be discharged by some judicial proceeding. It is so in England, it is so in the colonies and provinces of England." He further says: "It was a subject of regret that M'Leod's release had been so long deferred;" and in answer to the question proposed to him by Lord Ashburton, stated "it was for the Congress of The United States, whose attention has been called to the subject, to say what further provision ought to be made to expedite proceedings in such cases, and that the government of The United States holds itself not only fully disposed, but fully competent, to carry into practice every principle which it avows or acknowledges, and to fulfil every duty and obligation which it owes to foreign Governments, their citizens or subjects."

During the same month, on the 29th of August, 1842, Congress passed a law by which immediate transfer of jurisdiction might be made to the courts of The United States of all cases where any persons, citizens, or subjects of a foreign State, and domiciled therein, should be held in custody on account of any act done under the commission, order, or sanction of any foreign State or sovereignty.

The delay, therefore, attendant on the previous means of removal of such cases to the jurisdiction of The United States' courts for their decision, which was the only ground of complaint, was thus provided against, and every suggestion which had been made on the subject, was thus fully met and answered.

In reference to the other grounds of complaint—the violation of the rights of territory of The United States in the seizure of the Caroline—Mr. Webster, in reply to the declarations of Lord Ashburton, thus disposes of the matter in the same letter: "Seeing, he says, that the transaction is not recent; seeing that your lordship, in the name of your government, solemnly declares that no slight or disrespect was intended to the sovereign authority of The United States; seeing it is acknowledged that, whether justifiable or not, there was yet a violation of the territory of The United States,

and that you are instructed to say that your Government considers that as a most serious occurrence; seeing, finally, that it is now admitted that an explanation and apology for this violation was due at the time, the President is content to receive these acknowledgments and assurances in the conciliatory spirit which marks your lordship's letter, and will make this subject, as a complaint of violation of territory, the topic of no further discussion between the two governments."

These subjects of difficulty and controversy between the two countries were thus fully and finally adjusted, so that the able and patriotic statesmen by whom this settlement was effected trusted, in the words of Lord Ashburton, "that these truly unfortunate events might thenceforth *be buried in oblivion.*"

The question then arises, what was the effect of this settlement on the private claims of any citizen of either country against the other? It is quite clear that this settlement was not made, leaving the private wrongs of the owners of the "Caroline" to be pressed against the British Government for adjustment by an American Agent; nor were the claims of M'Leod to indemnity for the injuries he may have received for supposed participation in these transactions to be set up through an Agent of the British Government against The United States.

Such a construction of the adjustment made between Mr. Webster and Lord Ashburton would be a violation of the whole tenor of the correspondence between the two Governments, and of the international ground on which they both concurred in placing the collisions between the two countries. In my view the entire controversy, with all its incidents, was then ended; and if the citizens of either Government had grievances to complain of, they could have redress only on their own Governments, who had acted as their principals, and taken the responsibility of making the whole matter an international affair, and had adjusted it on this basis.

I regret to say, that my associate does not view the matter

in this light. He does not regard the grounds of complaint between the two countries as settled, or, if so, he holds that the settlement does not bar the prosecution of the individual claim of M'Leod for redress against The United States.

He is further of opinion the merits of M'Leod's claim have been sustained, and that he is entitled to compensation. On this, which was the second point raised for discussion, I have also the misfortune to disagree with my colleague.

M'Leod, under similar circumstances in Great Britain, would have been liable to both civil and criminal process on complaint made by any citizen. In a civil process neither government could interfere further than to aid in presenting the international ground of defence for judicial consideration and action. If the defence interposed was sound, his discharge by the courts would necessarily follow, with all the incidents usually attending the recovering party in a court of law.

M'Leod was not entitled to immediate discharge from criminal process, because Great Britain had avowed his act. Her avowal of a deed done, as her act, does not necessarily make it an international defence. She might avow the acts of a private incendiary or murder, but it would not exculpate him from trial and condemnation. It is for the Government to determine through its proper tribunals whether the act done is of that character, and has been committed under such circumstances, as, *on principles of international law*, ought rightly to shield the individual from guilt. The judicial authority, when the case is rightly before it, or the executive power, when it is fully within its control, is to determine this question by itself, and is to take time to determine it properly. This is the only course to be taken on a demand for the release of an individual arrested as M'Leod was for a capital offence.

The United States' Government adopted this cause at once. It did not admit the justification set up by Great Britain for her acts, and took issue with her upon it; but, at the same time, it put in action every agency the nature of

the case admitted of to interpose this defence for the benefit of M'Leod, at the court before which he was arraigned.

This is fully conceded by Lord Ashburton. All rightful demands, therefore, either of the British Government or M'Leod, were complied with. The proceeding against him originated before a local tribunal not of the highest resort in matters of international law. It was subject to control, however, both before and after trial, by a revision of any decision it might erroneously make on such a point, by a transfer to courts of the last resort. Delays might arise from this cause, but neither Great Britain nor M'Leod had any proper ground of complaint against The United States arising from the arrangement of our judicial tribunals. Any American litigant in British Courts might equally well make it a ground of complaint, that the cost or delay of those tribunals operated in any given case as a denial of justice, and claim compensation for it as an international wrong. No such principle of international law exists.

Lord Ashburton stated that this delay was a matter of mutual regret, and expressed the hope that provision might be made to obviate its occurrence in the case of others engaged in the same transaction who were liable to be arrested at any time on their crossing the border. This suggestion was promptly met, and a remedy was provided for the immediate transfer of these cases to a court of the last resort, where such defence might be more readily made available. It is clear, therefore, that there is no legal or equitable international claim or grounds of complaint, except such complaint as must always exist in all free constitutional governments that persons must be holden amenable to process of law, duly and legally instituted, until such time as proper adjudication can be on any plea interposed for their defence.

Considerable stress in this case has been laid on a statement of Mr. Webster, in a speech in The United States' Senate, that the owners of the steamer "Caroline" had violated the laws of The United States, and were not entitled to compensation. From this admission it has been argued that no person could be held liable for the destruction of the

steamer, "Caroline," and that there was no ground of complaint for the invasion of The United States' territory to effect its destruction. But neither of these results follow from such an admission.

If it be admitted that the "Caroline" was aiding and abetting the rebellion on Navy Island, in violation of law, it does not follow that it was justifiable to seize and burn her in The United States' territory, and take the life of a citizen who was casually present on the wharf. It is not a question of property, but of sovereignty. Such an act might at the time have caused the loss of many lives, and desolated the entire frontier. It was, therefore, exceedingly hazardous and dangerous in its consequences, and was an act that, in the words of Mr. Webster, and of every constitutional writer, would be justifiable only in case of self-defence, impelled by absolute necessity—"a necessity instant and overwhelming, leaving no choice of means or moment for deliberation."

The justification never came up to anything like this. Indeed, it was attempted to be palliated on other and different grounds. It was said, when the expedition started, it was supposed the "Caroline" was at Navy Island, and that it was an after thought and sudden movement merely that induced them to proceed across the river, and seize her there, and was not a deliberately planned invasion of The United States' territory. Some of the aggravating circumstances attending the burning of the "Caroline," and sending her adrift over the falls were attempted to be explained away by saying that they could not take her across the river. It was also said that Durfee's life was taken by a chance shot from some one on the wharf.

These allegations and mitigating circumstances were pleaded in extenuation of the wrong done. They furnished no justification of the act. Great excitement arose from it, enough to show that if it had been slightly more calamitous its consequences might have been truly deplorable. It was fortunate that it was attended with no worse results.

All these matters alleged were duly considered. The Statesmen of both countries regarded the outbreak and colli-

sion as sudden and unpremeditated, while neither party really designed wrong to the other; and looking on the occurrences from this high and honourable international view, the whole matter was fully adjusted by such action on the part of The United States' Government, in reference to M'Leod, as I have named, which was all the case admitted of; and by such apology on the part of Great Britain, in reference to the violation of The United States' territory as, in the words of Mr. Webster, "a high and honourable nation only could give, and a high and honourable nation receive."

For these reasons, I am of opinion that neither on its merits, nor as an open ground of controversy, can the claim before us be allowed. It appears from the testimony in the case, that M'Leod had been sheriff for some years in the county adjoining the Niagara frontier, and took an active and efficient part, as a civil officer, in suppressing the rising within his district. M'Leod attributes to these efforts the erroneous impression that he was engaged in the seizure of the "Caroline," or it may have caused, as he thinks, a conspiracy to persecute and oppress him, instigated by persons concerned in the rebellion, who had fled to The United States. If this be so, it might, perhaps, form a consideration for some allowance to him by his own country. Beyond this, there is no ground on which he may claim damage of any Government, other than the general claim of any citizen who may have suffered under erroneous prosecution.

It may excite some surprise that this case should be submitted to us by the British Government. It doubtless arises from the fact that the Agents of the Governments have adopted the course to present all claims found on file since the peace of 1814, and this has been presented through inadvertence, and should not be persisted in. I cannot believe that his lordship, the Secretary for Foreign Affairs, or the Ministry with which he is associated, can have forgotten the final adjustment of this controversy many years since, or that they can give a construction to the correspondence on this subject different from what I have affixed to it. For this reason, I especially regret that it has become the ground of a

difference of opinion before this Commission, and thus assumes the character of a claim presented in violation of this adjustment, and of the good faith the people of both countries have affixed to the acts of eminent negotiators now passed away.

Mr. M'Leod.

London, January 5, 1815.

The umpire reports that this case arose out of the burning and destruction of the American steam-boat "Caroline" at Schlosser, in the State of New York, on the Niagara River by an armed force from Canada in the year 1837, for which the British Government appears to have delayed formally answering the claims of The United States, until 1840, when the claimant was arrested by the authorities of the State of New York on a charge of murder and arson, as having been one of the party which destroyed the "Caroline." The British Government then assumed the responsibility of the act, as done by order of the Government authorities in Canada, and pleaded justification on the ground of urgent necessity.

From this time the case of the claimant became a political question between the two Governments; that of The United Sates used every means in their power to insure the safety of the claimant, and to procure his discharge, which was effected after considerable delay.

It appears by the diplomatic correspondence that the affair of the "Caroline," the death of Durfee, who was killed in the affray, and the arrest of the claimant, were all amicably and finally settled by the diplomatic agents of the two Governments in 1841 and 1842.

The question, in my judgment, having been so settled, ought not now to be brougbt before this Commission as a private claim. I therefore reject it.

JOSHUA BATES, *Umpire.*

Messrs. Uhde.

Dr. Phillimore, for the claimants:

It cannot be disputed that *prima facie* Mr. Uhde is entitled under the terms of the Convention—namely, "subjects of Her Britannic Majesty to have his claim entertained by the Commissioners."

I agree, however, that a Treaty or Convention is to be construed, and particular expressions in it interpreted, agreeably to the rules of international law.

I do not know upon what principle of law, or what authority among jurists, a restrictive *interpretation* could be affixed upon these words of the Convention, unless, indeed, (as I understand the American counsel to argue) they happened to have received such restrictive interpretation from a uniform current of decisions of acknowledged international authority.

I do not see that the authority of any jurist is referred to by Mr. Thomas, and the cases which he cites* are far from satisfying me that the Commissioners could legally adopt any such exceptional construction of the terms as is contended for. They are taken from the prize courts, from the privy council, from the common law, and from the equity courts.

A misunderstanding of the cases in the Prize Court appears to me to be at the root of Mr. Thomas's argument.

It is quite true that *flagrante bello* merchants residing in the enemy's country are considered, with reference to the belligerent right of maritime prize, as subjects of that country, without reference to the country of their origin or allegiance, and without much reference to the length of their residence.

Their domicile, *for this particular purpose*, is said to be

* This is designed as an answer to Mr. Thomas's argument in Laurent's case, page 136.

sufficient to found the right of the maritime captor; but it would be stretching the principle of those decisions to an extent which was never intended, to say that they were not British subjects in the sense of this Convention; for instance, and the example alone is sufficient to answer the whole question, is there any jurist who would say that an injury offered to a British merchant residing at Mexico would not, all other means of redress being exhausted, justify the issue of reprisals on the part of Great Britain?

The case of McConnell *vs.* Hector, decided in 1802 (3 Bos. and Puller, p. 314), that persons who had incorporated themselves with the commerce of the enemy, *flente bello*, may not sue in this country.

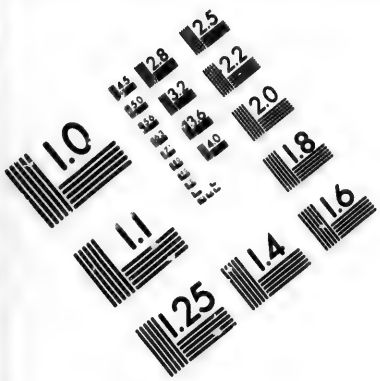
The case of Albretch *vs.* Susman (2d Vesey and Beames, p. 326) decided that the *quasi diplomatic character* of Consuls made no difference as to the law on this point.

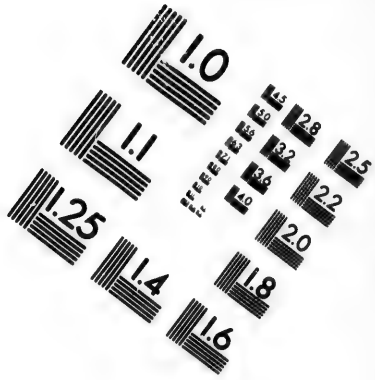
The Countess of Conway's case (2d Knapp's Privy Council Reports, p. 367), when examined, appears to be adverse to Mr. Thomas's argument, for Mr. Baron Parke decided, in that case, that the party must show "that she was a British subject in some sense," and that "one of these two things must be shown, either that the countess was a natural-born British subject, or that having been born abroad she was domiciled in England, and in that character entitled to the protection of a British subject at the time of the confiscation." Now, Mr. Uhde is a natural-born subject of Great Britain, and his native character, by a particular regulation of the Mexican State, is most carefully preserved.

I am of opinion that the principles of international law do not warrant the restrictive interpretation sought to be put upon the plain words of the Convention, and that Mr. Uhde is not disentitled to have his claim entertained by the Commissioners.

ROBERT PHILLIMORE.

Doctors' Commons, *October* 14, 1854.





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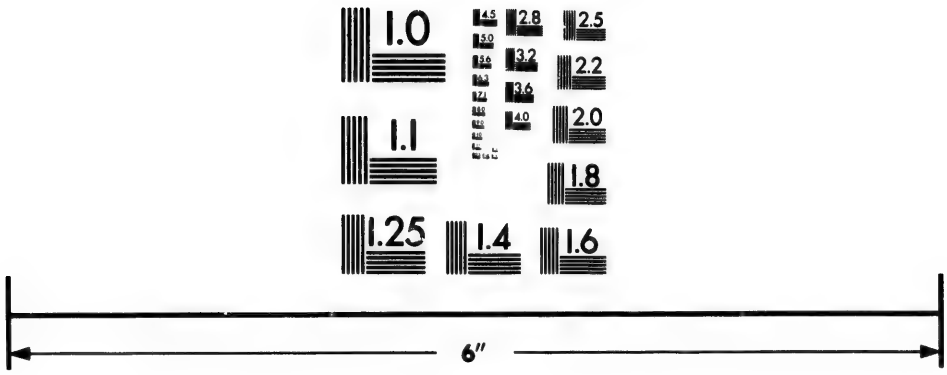

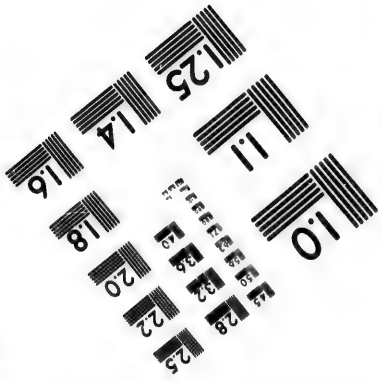

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REPLY OF MR. THOMAS, AGENT OF THE UNITED STATES, TO THE ARGUMENT OF DR. PHILLIMORE, M.P., ADVOCATE TO HER MAJESTY IN HER OFFICE OF ADMIRALTY, &c.

THE learned advocate, Dr. Phillimore, has, in his opinion, reviewed and attempted to answer my argument in the case of the Messrs. Laurent. He admits that "a Treaty or Convention is to be construed, and particular expressions in it interpreted, agreeably to the rules of international law;" but he says that I do not cite any jurist in support of the meaning I give to the term "British subjects," as this is used in the Convention.

It is important, in the outset, to observe that the learned advocate has admitted that we are not to look into the British statutes for the meaning of the term "British subject," but that we are to seek for its interpretation in the law of nations. The jurists and writers on international law to whom he refers do not make the law; they collect the decisions of the courts that determine what the law is, and it must be quite as authoritative to quote from the decisions as to cite the jurist who has merely collated and made comments upon them. However, it will not be difficult to cite both the jurists and the courts in support of the construction for which I contend.

Chancellor Kent is a jurist of acknowledged authority everywhere, in England and America, and he says "the position is a clear one, that if a person goes into a foreign country and engages in trade there, he is, by the law of nations, to be considered a merchant of that country, and a subject for all civil purposes, whether the country be hostile or neutral."

The claimants were engaged in trade in Mexico, while that country was at war with The United States, and hence Chancellor Kent's doctrine applies in the strongest manner. They are to be considered subjects of that country, and, of course, enemies of The United States. If they were subjects of that country, they could not be at the same time British

subjects, in the sense of the Treaty, because Dr. Phillimore admits that its words are to be interpreted by international law, and that law looks only to see who are rendering practical allegiance, who are absolutely under the control and government of a country, in order to determine who are its subjects.—(One allegiance; see Phillimore, Int. Law, p. 347.)

In support of my view of the law on this point, I would cite Dr. Phillimore's own work on Domicil, page 133, where he quotes entire, and with approbation, the case of the ship "Ann." This vessel was seized in the river Thames in 1812. The master was a British-born subject, and his family still resided in Scotland, but he was residing in America; an Order in Council decreed that all vessels under the flag of The United States, *bonâ-fide the property of His Majesty's subjects*, purchased before the war, should be restored, and the question was, whether the master of the "Ann" was a British subject? Sir William Scott, whose decision Dr. Phillimore approves, said "he cannot take advantage of both characters at the same time. He has been sailing out of American ports. It is quite impossible he can be protected under the Order in Council, which applies only to those who are clearly and habitually British subjects, having no intermixture of foreign commercial character." Here is, from Dr. Phillimore himself, the exact interpretation of the words "British subject," for which I am contending. But he says again, at page 146 of the same work: "*Every man is viewed by the law of nations as a member of the society in which he is found.*" Residence is *prima facie* evidence of national character, susceptible, however, at all times, of explanation. If it be for a special purpose, and transient in its nature, it shall not destroy the original or prior national character; but if it be taken up *animo manendi* (with the intention of remaining), then it becomes a domicil, superadding to the original or prior character the rights and privileges, as well as the *disabilities and penalties of a citizen, a subject of the country in which the residence is established.*"

According to this rule of Dr. Phillimore, the claimants being found in Mexico, were, by the law of nations, members

of that society and subjects of that country; they are not, therefore, included within the provisions of a Treaty to settle claims of "British subjects" upon the Government of The United States.

Dr. Phillimore admits that persons residing in the enemy's country are considered as subjects of that country, in reference to their property on the high seas. If this is true of their property on the ocean, why is it not equally so of this same property when it is located in the country itself. It is then much more hostile, and clothes the owner who is with it more especially with the enemy character. Suppose an American citizen should now be residing in Sebastopol, his property on the ocean would be liable to seizure and confiscation, for his domicil being there, he would be invested with the national character of a Russian subject, and what he might have within that fortress would, if possible, render his Russian character even more complete. Will it be contended that, if his property there should be injured or destroyed, the British Government must settle with him upon a different principle from that of the native-born Russian found in Sebastopol? According to Dr. Phillimore's argument in favour of British-born subjects domiciled in Mexico during the war, he is entitled to be considered as a neutral, and, if hereafter there should be a Convention to settle the claims of American citizens upon Great Britain, he may claim compensation for injury done to him or his property in Sebastopol. I apprehend the British Government will never adopt any such rule.

Dr. Phillimore, to show that I have stretched the principle of the Admiralty decisions too far, supposes an injury offered to a British merchant residing in Mexico, and all other means of redress being exhausted, asks "would not any jurist say the English Government would be justified in making reprisals?" I will answer this by asking whether The United States would be justified in making reprisals for an injury that may be done to one of her citizens that may be found in Sebastopol? Every man found there (by the law of nations) is an enemy of Great Britain, and will be treated as a subject

of the Emperor of Russia. When peace is made, the American citizen so situated will not be permitted to say, that he is not bound by it, but that England has yet to make a separate settlement of his claims for property seized or destroyed. A Treaty of Peace binds every person in the country and settles all their claims; and upon this principle the Treaty of Peace between The United States and Mexico disposed of the claim of every man in that country upon The United States.

It is not true, then, to say that the English Government would be justified by the law of nations in making reprisals for an injury done to a British-born subject residing in Mexico during the war between The United States and that country. She could no more interpose, as a matter of right, in behalf of a British-born than she could in favour of a Mexican-born subject, if they were both there engaged in business.

What Dr. Phillimore says of the case of McConnell *vs.* Hector (3rd Bosanquet and Puller, p. 114) is true, but he makes no reference to the essential point in that case on which I relied. He says: "This case decided that persons who had incorporated themselves with the commerce of the enemy during war cannot sue in this country." Yet, if he stops there, the impression is left that this is all that was declared to be law by that case. Lord Alvanley did not arrive at that conclusion without having first laid down the doctrine that "while an Englishman resides in the hostile country he is a subject of that country." It is clear, on this authority alone, that the claimants cannot be regarded as British subjects in their Mexican transactions. He says the case of Albrecht *vs.* Susman (2 Vesey and Beames Rep., p. 323) decided that the *quasi* diplomatic character of consuls made no difference as to the law on this point. It also decided, however, that the Consul was a subject of the enemy's country if he continued to reside there during war, and for a still stronger reason must the subject, holding no official position, and remaining in the enemy's country, be so regarded.

Conway's case (in 2nd Knapp's Privy Council Reports)

fully sustains the doctrine that a foreigner domiciled in a country is considered by the law of nations a subject of that country.

Dr. Phillimore's opinion, that the term "British subjects," used in the Convention, embraces British-born subjects domiciled in Mezico, or engaged there in trade, and hence parties to the war between The United States and that country, is not therefore sustained by any of the cases he has cited, nor by his own authority.

JNO. A. THOMAS.

London, October 26, 1854.

Mr. HORNBY, British Commissioner:

IT appears from the papers and sworn testimony submitted in this case by the Agent of Her Majesty's Government, that Mr. Charles Uhde, the claimant, was born in the city of London, his mother being an Englishwoman, and his father a foreigner, but domiciled in this country, and a naturalized British subject. In 1842 the claimant took up his residence at Matamoras, in Mexico, carried on business there as a merchant, and acted also as English Vice-Consul, until about three years since, when he returned to England. It is denied, on oath, that he ever became a citizen of the Mexican Republic, or enjoyed any of the privileges of a Mexican citizen; but, on the contrary, was always compelled, in common with other British subjects resident at Matamoras, to obtain annually, through the intervention of the British Legation, from the Mexican Government, permission to reside in Mexico. In November, 1846, the town and port of Matamoras, situated on the Mexican side of the Rio Grande, were in the possession of The United States' army, the Republic of Mexico and The United States being then at war with each other.

It appears also that in the month of October, 1846, a cargo of merchandize, belonging and consigned to the claimant, was shipped at the Havannah on board the American schooner "Star," Benjamin Merrill, master. According to the terms of the charter-party, the "Star" was to proceed to Matamoras, and if not allowed to discharge there, to go on to New Orleans. The "Star" arrived on the 6th of November in the same year off the mouth of the Rio Grande, and in consequence of a public notice exhibited by The United States' officers at the entrance of the port, the captain went ashore at the mouth of the river, and proceeded to Brazos Santiago, where he reported himself to Mr. G. S. Cook, who, it is admitted, was the then Deputy Collector

and Inspector of The United States' Government at that place. To this officer the captain exhibited his manifesto and ship's papers, and told him, as appeared from the papers themselves, that the cargo was shipped directly from the Havannah, and that he had been ordered to proceed to New Orleans if the importation to Matamoras was forbidden. Mr. Cook then gave the captain a permit in the following terms:—

"The Master of the schooner 'Star,' from Havannah, is authorized to discharge her cargo at Burita or Matamoras.

(Signed) "G. S. Cook, Deputy Collector.

"*Brazos Santiago, November* 7, 1846."

It is not now disputed that this permit was given, or that it was in the terms which I have quoted. The cargo was accordingly, under the authority of this permit, transshipped to a steam-vessel in the usual manner, proceeded to Matamoras, was there unshipped, and placed in the claimant's warehouses. A few days after, however, the goods were seized and taken possession of by Colonel N. S. Clarke and Quartermaster-Lieutenant Chace, on a charge of having been fraudulently introduced.

It is in evidence that the claimant, after formally protesting against this seizure, requested the military authorities to direct the goods which had been damaged in the course of the voyage, or which were of a character to deteriorate in value by being kept, to be sold by public auction, without prejudice to the question of whether or not the seizure was justifiable or proper. This application was refused, and the consequence was that the claimant has been unable to obtain from the insurers any indemnity on account of the damaged goods. The goods appear to have been detained in the custody of the military authorities until the month of January, 1847, when they were sent to Galveston, in Texas.

Representations were immediately made to Her Britannic Majesty's Consul at Matamoras, and to Her Majesty's Minister at Washington, and the latter, having communicated with his Government, was instructed to require of The United

States' Government the restoration of the goods to the claimant.

Mr. Uhde appears then to have gone to Washington, to have employed counsel to bring his case under the notice of the Secretary of the Treasury, who, having examined the depositions on oath, and cross-examined the Captain, decided that the cargo should be delivered up upon payment of duties and expenses, provided that the Deputy "be first notified to make good an allegation by producing, if he could, a supposed original oath," alleged to have been made by the Captain, to the effect that the duties had been paid in The United States prior to the importation into the Rio Grande. These instructions were given to the Collector, but they were never acted upon. No oath was produced, and the goods were ultimately, in the year 1849, sold at a great loss, under a decree of a Court at Galveston. It does not appear what jurisdiction the Court had in the matter, and although six years have elapsed, no final decision has been given.

I forbear to allude to the numerous representations which have been made relative to the mode in which the goods were entered, and the conduct of the Captain and Mr. Uhde, since it is clear that they were founded entirely in error, and no endeavour has ever been made to substantiate them, either by the Collector or any officer, military or civil, of The United States' Government.

Against the decision however of the Secretary of the Treasure, so far as it referred to the payment of duties under the Tariff Act of 1842, the non-allowance of damage, draft, or tare, and the interest on such duties, the claimant, and on his behalf the English Government, protested, on the ground that in the face of the permit—the non-existence of any law, or military regulation, or tariff imposing a duty—the absence of any reasonable pretext or suspicion of Mr. Uhde's want of *bona fides* in the matter—the express acquittal by the Secretary of State of any fraud or bad faith being imputable to Mr. Uhde—the uncontradicted evidence adduced by him, and the permit of the Deputy Collector—it was manifestly unjust and unreasonable.

I do not see that it is at all important for us to go into any matters having reference to the decision of the Secretary of the Treasury. The Claim before us arises in a very great degree out of the fact, that the decision of the Secretary of the Treasury, whether just or unjust, was not acted upon. The direction he gave was to the effect that the Collector should call upon his Deputy to produce a certain oath, and that, in the event of his not producing it, the goods should be delivered up to Mr. Uhde. The oath was not produced, nor were the goods—shackled or unshackled with good or bad conditions—delivered up, or offered to be delivered up to the claimant; and it is in consequence of this non-observance of the directions of the Secretary of the Treasury that the claim to a very great extent arises.

As great stress has been laid upon the question of whether or not the Revenue Laws of 1842 were in existence and operation at Matamoras at the time these goods were seized, I propose to consider this, with reference to the permit of the Collector, as also, whether or not goods coming from the Havannah were liable to any, and what, duty, under the Circular of the 30th of June, 1846,—premising however that the claimant has on oath asserted, and has not been contradicted, that he, in the first instance, offered to pay the duties on the goods which the military authorities should assert were duly payable thereon, and that he does not now claim in respect of those duties, but limits his demand to the bare invoice value of the goods, with a profit of 20 per cent. thereon, and interest, and his legal expenses.

In considering these propositions, it is necessary to bear in mind that at the time of the seizure, Matamoras was in the military occupation of The United States' forces, and was in no way incorporated with or formed part of The United States' territory; and the Circular to Collectors of the 30th of June, 1846, distinctly says that Matamoras was at that time a port or place in the territories of Mexico, in the actual possession of The United States' forces. The Revenue Laws therefore of The United States *ipso vigore* had no operation within Matamoras; they had not been made specially appli-

cable by the military authorities, and there could not therefore be a violation of them. The suspension of the sovereignty of Mexico operated also, according to the settled doctrine of the law of nations, to the suspension of the laws of Mexico, and goods therefore imported into Matamoras by the inhabitants were subject only to such duties as The United States' authorities chose to impose. This is clear from a consideration of the law, as laid down in *The United States* v. *Rice*, 4 *Wheaton's Reports*, 246. The cargo was freed by Lieutenant Chace (*see his Report*) from any imputation of being in its nature contraband of war, and no laws have been appealed to as promulgated by authority, imposing a duty upon a cargo coming in under the circumstances in which this cargo entered.

There are also two answers to the argument which has been founded on the assumption that the Circular of the 30th of June, 1846, enacted certain tariff charges applicable to these goods. The first is, that this Circular was not in the nature of a proclamation, but simply an order "to Collectors and other officers of the Custom-houses of The United States." The second, that it does not in any way refer to ships or cargoes coming direct from a friendly foreign port, but simply to the trade between the belligerent parties, and to cargoes that had previously paid duty at some port of The United States. It refers in fact solely to the coasting trade, and cannot, by any reasonable interpretation of its terms, be made applicable to a trade between two ports, neither of which was within the operation of the Revenue Laws of The United States, or within the jurisdiction of the officers to whom the Circular was addressed; and this is conclusively determined by the wording of the Circular of the 16th December, 1846, which provides specially for the *casus omissus* in that of the 30th of June.

It has been contended, however, by the learned Agent, that Mr. Cook, the Deputy Collector, having exceeded his duty in granting the permit to Matamoras and Burita, which were without his jurisdiction, it was of no avail; but even if this were so, some evidence must be given of the

existence of a tariff, or of the promulgation by military authority of regulations affecting the enactment and collection of import duties, and none has been given. The permit, therefore, is evidence that the Collector, whose office it was to interpret the law, did not conceive that any duties were leviable; and no evidence of any description has been given that any duties were declared to be payable by The United States military authorities. It is a mistake also to suppose that there was a custom-house at Matamoras; the evidence shows that it was only established some months after the arrival of the "Star." Nor is it true that the port was blockaded, for there is also uncontradicted testimony to the fact that the blockade had ceased for five months before the arrival of the claimant's cargo.

Under these circumstances, and on the grounds—First, That the justice of this claim has been *admitted* by The United States' Government, in the event of the alleged oath of Captain Merrill not being produced, and subject to certain deductions.

Secondly—That the issue raised by The United States' Government, as to the existence or non-existence of this oath, as decisive of the case, has been accepted by the English Government in the diplomatic correspondence on the subject, and that no suggestion of any other question in the case has ever been made by the Government of Washington.

Thirdly—That although the letter of Mr. Walker was written nearly eight years ago, no proof whatever has been offered that any such oath as alleged was ever taken by Captain Merrill; that no one of the steps directed by Mr. Walker has been taken, so as to enable Mr. Uhde to obtain his goods, or their value.

Fourthly—That, on the other hand, the Captain has sworn that he never did take such oath, but that the Collector knew all the facts of the case, as also appears from the permit given by him.

Fifthly—That on this state of facts it is contrary to the plainest principles of justice to give effect to mere suspicions

or surmises, totally unsupported by evidence on the one hand, and distinctly contradicted on oath on the other.

Sixthly—That it appears from Consul Giffard's report, made at the time, as well as from Mr. Uhde's protest or remonstrance with reference to Mr. Walker's instructions, that he would have paid, and offered to pay, the duties, if permitted to do so; that even supposing such duties had been imposed by The United States' authorities at this time, which is very far from clear, that it is clear, as admitted by Mr. Walker, that the "act of the Representative of the Government ought not to be used to *entrap and deceive individuals, and subject them to heavy losses,*" and that under the circumstances stated by Mr. Uhde, "*it would be an act of extreme severity to confiscate the goods to the Government.*"

Seventhly—That this plain admission of Mr. Walker (officially communicated to the English Government) was made with a full knowledge of all the facts now before this Commission, and that, therefore, to reject this claim will be, by the admission of the Government of The United States, to *entrap and deceive an individual, and subject him to heavy losses.*

Eighthly—That the claim of Mr. Uhde being a just one, the conditions imposed by Mr. Walker are *unjust* and *oppressive;* and that as no attempt has been made by The United States' Government to disprove the sworn testimony of Mr. Uhde and Captain Merrill, for which that Government has had *seven years' time,* the claimant is entitled, as contended by Lord Palmerston, to have his goods (and since that is now impossible), the value of them, returned to him without *any deductions whatever.*

Ninthly—That as it appears that the goods would have been shipped to New Orleans had the fair course of warning the vessel off been pursued, the Claimant might fairly have contended that he ought at any rate to be put in the same position with reference to duties as if he had shipped his goods to that place, but that the claimant has abandoned all question with reference to the duties, and demands only the

invoice price of the goods, with part only of the profit which would have been made had the *whole duties*, imposed by The United States' authorities in Mexico, subsequent to the shipment, been paid.

And lastly—That as the losses occasioned to Mr. Uhde have arisen from the act of The United States' Collector, those losses ought not to fall on Mr. Uhde;—I am of opinion that the Claimant is entitled to the full amount claimed by him, viz. £41,409·79½.

MR. UPHAM, United States' Commissioner:

IN this case the Messrs. Uhde & Company had been for many years resident merchants in Matamoras, in Mexico. They remained there during the Mexican war and subsequent to its capture. The port was then opened for the introduction of merchandise, under regulations similar to those imposed on merchandise imported into The United States. The "Star," belonging to the claimants, had been previously chartered at New Orleans for the Havana, and, from there, was to take a cargo of merchandise to Matamoras. On arrival, application was made to know if the vessel might enter the port, and she received a permit from G. S. Cook, at the mouth of the Rio Grnae, that the vessel might enter to discharge her cargo at Barita or Matamoras.

The vessel proceeded to Matamoras, landed her cargo without further licence, or rendering any account for duties, and they were seized by the commandant of the station. Application was made at Washington, and, on a full hearing there had of the claimants, the seizure was sustained by Secretary Walker as legal, and the goods were ordered to be discharged on the payment of duties according to the tariff of 1842, and charges and expenses of warehouse rent, and interest on the duties from the time of seizure until the payment was made.

The decision was communicated to the parties. Subsequent to this period, there is no evidence showing any offer of payment of these duties, or any attempt to comply with the order of the Secretary of the Treasury; and the goods were ultimately proceeded against in The United States district of Galveston, and the goods were sold.

The case has been argued mainly on the point, whether cognizance could be taken of the Messrs. Uhdes' claim before this Commission; they having been resident merchants at Matamoras, during the war between Great Britain and The United States. That point has been already fully considered

and settled in the case of the Messrs. Laurent, and if it came within the principles of that decision, we should have no hesitation in its re-affirmance. But the proceedings here all arise after Matamoras had been captured, and it had become an American possession, with its ports opened to commerce, both to resident citizens and subjects of all other nations. The Messrs. Uhdes, then, were not to be regarded as alien enemies, and might perhaps rightfully be considered as coming within their original character as British subjects. The Secretary of the Treasury, in considering their case, took no exceptions on this ground, and it is a case which, under these circumstances, may well be holden as within the jurisdiction of this Commission.

The claim for damages has been placed on two grounds: 1. It has been contended that the permission to enter the river for a discharge of goods at Barita, or Matamoras, was an allowance to enter free of duty. It seems to me, that this is a wholly groundless pretence. The purport of the permit indicates nothing to this effect on its face; and, moreover, it is in every respect manifestly an unjust evasion of the whole spirit and tenor of the orders, the design of which was to place imports on the same basis as those into The United States.

It was argued that an offer of payment of duties was made to the commandant before application was forwarded to Washington for relief. I am not satisfied from the testimony before us, that any such offer was made. A full and elaborate hearing was, at the time, had before the Secretary of the Treasury, and the witnesses of the claimants were examined under interrogatories in writing. I have seen no reason to doubt the justness of his award, and if it be just, it shows a wrongful attempt at evasion of duty in a clear case, and renders it incumbent on him, after such judgment, to show a tender of readiness and willingness on his part to comply with the decision made.

The claimants have offered no evidence of any measures having been taken by them to meet such decision, by demand of the goods from the commandant of the place, and a tender

of the duties and expenses required, or of any other effort on their part to reclaim their property, subject to the lien of the Government.

This was clearly imperative on them. There seems to have been no design to comply with the order of the Government, and we can account for it only from carelessness or inability, or indisposition to conform to it. They should, at least, exonerate themselves from any such charge. They have not done this, or attempted to do it. The goods remained for a long time undisposed of, and were finally libelled and sold. This result was inevitable, unless prevented by the action of the claimants, and I can see no just ground in such case for the allowance of any remuneration on account of the sale.

"Messrs. Uhde."

London, January 15th, 1855.

The umpire reports that Messrs. Uhde & Co. were merchants of Matamoras, where they had resided from the year 1842, carrying on trade there, having a house of business and a home in that city, they continued to reside there after the declaration of war by The United States against Mexico in 1846 and until 1851; according to the interpretation of the law of nations by the highest Courts in Great Britain, it is a point settled "beyond controversy, that, where a neutral, after the commencement of hostilities continues to reside in the enemy's country for the purposes of trade, he is considered as adhering to the enemy, and as disqualified from claiming as a neutral altogether." (See Dr. Lushington's judgment in the case of the "Aina," reported in the "Jurist" of July last.) However good the claim of Messrs. Uhde & Co., as conquered Mexicans, against The United States, by the interpretation of the law of nations, as given by the decisions of the courts of Great Britain, the claim ought to be excluded from this Commission. As, however, the Government of The United States appear to have entertained the claim in the correspondence between the Diplomatic Agents of the two countries, and it seems desirable for all parties that the claim should be settled without further delay, I shall proceed to examine and decide the case on its merits, as if rightly before the Commission. The case is as follows: On war being declared by The United States against Mexico in 1846, the ports of Mexico were declared in a state of blockade, but several ports (amongst them the port of Matamoras on the Rio Grande), having fallen into the possession of The United States' forces, the Government on the 30th June of that year, issued a circular, addressed to the collectors and other officers of the customs in The United States in regard to Matamoras to the following effect, viz.:—

"In case of application of vessels for clearances for the port of Matamoras, you will issue them under the following circumstances.

"1st.—To American vessels only.

"2nd.—To such vessels carrying only articles of the growth, produce, or manufacture of The United States, or of *imports from foreign countries to our own, upon which duties have been fully paid.* Upon all such goods, whether of our own or of foreign countries, no duties will be chargeable at Matamoras, so long as it is in the possession of The United States' forces. *Foreign imports*, which may be re-exported in our vessels to Matamoras, *will not be entitled to any drawback of duty; for if this were permitted they would be carried from that port to The United States, and thus avoid payment of all duties.*"

Of this circular, which was published in the newspapers at the time, Messrs. Uhde & Co. must have been aware. They, however, sent to New Orleans, and chartered the American schooner "Star" for a voyage to Havanna, to load a cargo of merchandize for Matamoras, if open; if not open, to New Orleans, to discharge. The circular indicates that no foreign goods could be shipped from The United States to that port, until the duties had been fully paid. Messrs. Uhde & Co. could not, therefore, when chartering the "Star," have supposed that a cargo of foreign goods from a foreign port could enter without paying duty, when foreign goods from The United States were *chargeable with full duty* in The United States, in order to their admission free at Matamoras. It is stated that it was known at Havanna when the "Star" sailed, that the port of Matamoras was blockaded; it is very extraordinary that a vessel should proceed to a port known to be blockaded, to inquire whether it is so or not. The "Star" arrived at Brazos the 6th November, 1846, (Brazos is on the Texian bank of the Rio Grande) where the Captain went on shore to inquire if he might enter, and Mr. G. S. Cook, who was, or assumed to be, Deputy Collector, informed him that he might, and charged him $7·50 for fees of entering his vessel. Captain Merrill, of the "Star," exhi-

bited his manifest, &c., and received a permit to discharge his cargo in the following words:

"The master of the schooner "Star," from Havanna, is authorized to discharge her cargo at Barita, or at Matamoras.

"Signed,

G. S. Cook, *Deputy Collector.*

"*Brazos, St. Iago, 7 Nov.* 1846."

The schooner was then brought into the river, and the goods were landed in open day by Messrs. Uhde & Co., and placed in their own warehouses, and were two days afterwards seized by the military Commander of the place, on the charge of being fraudulently introduced. The whole defence of Messrs. Uhde, for their landing the goods, rests on the value and force they attach to the permit given to Captain Merrill, to discharge his cargo. It is very well known to every one conversant with foreign trade, that it is the duty of every ship-master, on arrival at a foreign port, to proceed to the custom-house, enter his vessel, and pay light and port dues; until he has done so, he is not allowed to commence discharging his cargo. But this is very different from a consignee's permit to land the goods, which are entered and bonded, or the duties paid by the consignees, when a permit is granted to land the same. The seizure was therefore justifiable, as no inquiry was made by Messrs. Uhde & Co. if any duties were payable. After the seizure, it is stated that the claimants offered to pay the duties of the American tariff, *which was to go into operation on the* 1*st December next.* This was refused by Col. Clark, the commanding military officer, who seemed determined to wait orders from a higher quarter. The claimants then made application to the British Minister at Washington, who applied to the then Secretary of State, the Hon. James Buchanan; the case was referred to the Secretary of the Treasury, the Hon. R. J. Walker, who examined the master of the "Star," brought to Washington by the claimants and other evidence, and a final decision was come to, that the seizure was sustained; but an order was

made, directed to the Collector of the Customs, at Galveston, that the claimants might have their goods on payment of duty according to the tariff of 1842, and charges and expense of warehouse rent, and interest on the duties from the date of the seizure until paid. From some cause the settlemen was never carried into effect. The claimants allege that no person ever came to Matamoras as directed by the Secretary of the Treasury, and that the goods were taken to Galveston, condemned and sold in a damaged state for about $8,800.

My belief is, that had the arrangement, made by the Secretary of The United States' Treasury, been carried into effect, the result would have been that the claimants would have realized near the cost value of their goods. I therefore award to Messrs. Charles Uhde & Co., or their legal representatives, in full of said claim, the sum of twenty-five thousand dollars, this 15th January, 1855.

JOSHUA BATES, *Umpire.*

"PALLAS."

London, 15th January, 1855.

THE umpire reports that it is stated the "Pallas" was chased by a revenue cruizer from off Chittican Bay on the 4th August, 1840, for forty or fifty miles, captured, and sent to Sidney, detained six weeks, and when released, it was found that some of the rigging had been taken away, the cable damaged, and stores missing; part of the crew had left, and the voyage was broken up. There being no evidence of these facts, beyond the depositions of the President and Directors of the Insurance Company at Rockport (Maine), I reject the claim for want of evidence.

JOSHUA BATES, *Umpire.*

The "Prince of Wales."

Mr. Hornby, British Commissioner:

This claim arises out of the fact of the Collector of the Port of Astoria having served a notice on the Captain of the Hudson's Bay Company's steamer "Prince of Wales," to the the effect "that the Company were not authorized to use the said steamer for the purpose of either carrying freight or passengers on the Colombia River; and that if they did so, the Collector would seize and confiscate the vessel." The occasion of this notice was the offer made by an officer of the Hudson's Bay Company to convey Judge Storey, of The United States' Court, to Fort Vancouver; and although this gentleman represented to the Collector of Customs the impropriety of the view he had taken of the law, the latter persisted in the interruption thus offered to the trade of the Hudson's Bay Company.

Under fear of this threat the Hudson's Bay Company did discontinue their ordinary trading operations, so far as respected the carrying and earning of freight, &c., until an answer was received from Washington to their representations upon the subject. In this answer Mr. Webster repudiated the interpretation put upon the Treaty by the Collector, and the trade was resumed. The Company now claim compensation for the injury done them by this interruption of trade from the month of August, 1850, until April, 1852, which they assess, as they allege, at the very disproportionate and inadequate sum of £10,000.

That Mr. Webster was right in considering the view taken of the law by the Collector as erroneous, is clear from

a consideration of the words of the Treaty between Great Britain and The United States of 1846, which are as explcit on this subject as can well be. By the second article it is declared, that "from the point at which the 49th parallel of north latitude shall be found to intersect the great northern branch of the Columbia River, the *navigation* of the said branch shall be *free and open* to the Hudson's Bay Company, and to all British subjects trading with the same, to the point where the said branch meets the main stream of the Columbia, *and thence* down the said stream to the ocean, with free access into and through the said river or rivers, it being understood that all the usual porterages along the line thus described shall in like manner be free and open."

Without, therefore, the term "navigation" is to be used in a very restricted and unusual sense, it implies the liberty of earning freight on the Columbia River as well as passing up and down it in a pleasure-yacht. The second paragraph, however, of the same Article sets the matter entirely at rest and beyond all dispute. It says, "In navigating the said river or rivers, British subjects, with their goods and produce, shall be treated on the same footing as citizens of The United States," and no one certainly ever disputed the right or liberty of a United States' citizen earning freight on the river.

Indisputable as the fact is thus proved to be, that the Collector was wrong in giving the notice before alluded to, the alleged damages are too remote for me to be able to assess them with any degree of certainty or fairness. Moreover, the mere threat of the Collector, made without authority and unjustified by any reasonable interpretation of the law, might and ought to have been disregarded.

If the Collector had seized the vessel, either he or his Government would then have been answerable for the damage occasioned to the Company by such a proceeding. Under the present circumstances, however, I do not feel myself justified in doing more than simply disallowing the claim upon the grounds above stated.

ORDER OF THE COMMISSIONERS AND THE UMPIRE AS TO THE RATE OF EXCHANGE APPLICABLE TO THE AWARDS MADE BY THEM.

THE Commissioners, by and with the concurrence of the Umpire, hereby establish the relative rate of payments of the awards made by them in the currency of the respective countries of The United States and Great Britain, at four dollars and eighty-four cents to the pound sterling.

Commissioners { N. G. UPHAM, *United States' Commissioner.* EDMUND HORNBY, *British Commissioner.*

Umpire . . JOSHUA BATES.

January 13*th*, 1855.

RECAPITULATION.

Awards of Moneys made under the Convention for the adjustment of Claims of February 8, 1853, on behalf of British Claimants against The United States' Government.

Names of Parties.	Amounts awarded.
	$
Thomas Rider	625 00
The "Frances and Eliza," Christopher Richardson owner	34,227 00
Ship "Albion," John Lidgett owner	20,000 00
Steamer "Beaver," Hudson's Bay Company	1,000 00
Great Western Steam Ship Company	13,500 00
The "James Mitchell," Francis Ashley and als. owners	20,000 00
Miller and McIntosh	6,000 00
Brig "Lady Shaw Stewart," George Buckham owner	6,000 00
Godfrey, Pattison, and Co.	61,689 54
Messrs. McCalmont and Greaves	11,733 58
Andrew Mitchell	20,602 65
Hudson's Bay Company (claim for return of duties)	1,523 68
Brigantine Confidence	9,946 20
Hudson's Bay Company (Cayeuse war claim).	3,182 21
George Houghton	2,500 00
The "Baron Renfrew," Duncan Gibb owner	6,000 00
J. P. Oldfield and Co.	3,099 54
Charles Wirgman	30,473 48
Charles Uhde	25,000 00
Amounting in all to the sum of	$220,772 88

Or, at the relative value of exchange, as established by the Commissioners, to (£57,252 13*s.* 4*d.*) fifty-seven thousand two hundred and fifty-two pounds thirteen shillings and fourpence.

RECAPITULATION.

Awards of Moneys made under the Convention for the adjustment of Claims of February 8, 1853, *on behalf of The United States' Claimants against the British Government.*

Names of Parties.	Amounts awarded.
	$
N. L. Rogers and Brothers	7,676 96
Barque "Jones," P. J. Farnham and Co. owners	100,625 00
Schooner "John," Reuben Shapely, owner	13,608 22
"The Only Son," Fuller and Delano owners	1,000 00
Brig "Creole," Edward Lockett and als. owners	110,330 00
Brig "Douglas," Amos Frazar owner	600 00
Schooner "Caroline Knight," George W. Knight and als. owners	1,887 60
"The Tigris" and "Seamew," Messrs. Brookhouse and Hunt owners	24,006 40
Schooner "Argus," Doughty master	2,000 00
Schooner "Washington"	3,000 00
Brig "Enterprize," Joseph W. Neal and als. owners	49,000 00
Schooner "Hermosa," New Orleans Insurance Company and als.	16,000 00
Amounting in all to the sum of	$329,734 18

Or, at the relative value of exchange, as established by the Commissioners, to (£68,131 0*s.* 7½*d*) sixty-eight thousand one hundred and thirty one pounds seven and one half-pence sterling.

EXPENSES OF COMMISSION.

	£	s.	d.
Salary of Commissioners $3,000, or £620 per annum, each, for sixteen months, from Setpember 15, 1853, to January 15, 1855, during the actual time of session .	1,653	6	8
Clerk's Salary	399	8	4
Messenger's Salary, &c.	97	0	0
Rent of Office from September 29, 1853, to March 25, 1855, at £90 per annum	135	0	0
Housekeeper's Account during the above time . .	24	0	0
Stationers' and Copyists' bills	68	6	6
Printing and Binding of the Commissioners' Judgments and Binding also of Report for the two Governments .	120	0	0
Messrs. Quilter and Ball's Bill, as Accountants . .	57	15	0
Clerk hire of Umpire	4	11	0
Coals and Wood	11	10	0
Incidental Postage, &c.	18	0	0
	£2,588	16	6

The Commissioners leave it to the two Governments to determine the time when the salaries of the Commissioners should commence and terminate, and what travelling expenses, if any, should be allowed to the appointed place of meeting, and return from the same, and the compensation to be allowed to the Umpire.

Such further amounts as may be allowed on these accounts are to be added to the expensees here above written, and are to be defrayed by a rateable deduction from the total amount awarded by the Commission, in accordance with the 6th Article of the Convention, provided that, if the said expenses exceed the rate of five per cent on the same, the deficiency is to be defrayed in moieties by the Governments.

By the Convention it was left to the respective Governments to appear in behalf of the clainants by counsel

or agents, or not, at their option, and no compensation was established for such agents.

The Commissioners therefore leave the amount due to the Agents to be determined by their respective Governments.

EDMUND HORNBY,
British Commissioner.

N. G. UPHAM,
United States' Commissioner.

I HEREBY certify that I have duly examined, with the view of authenticating the same, the foregoing Records of the Commission, with the Transcript thereof, for the Government of The United States, and have found the same to be correct in every particular.

And I further certify, that the signatures therein are the genuine signatures of the Commissioners and Umpire.

Dated the 20th day of January, in the year of our Lord 1855.

N. L. UPHAM,
Secretary of Commission of Claims.